TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1908.

No. 169.

[redacted] W. MANSON ET AL., TRUSTEES OF ESTATE OF HERBERT HUDSON, APPELLANTS,

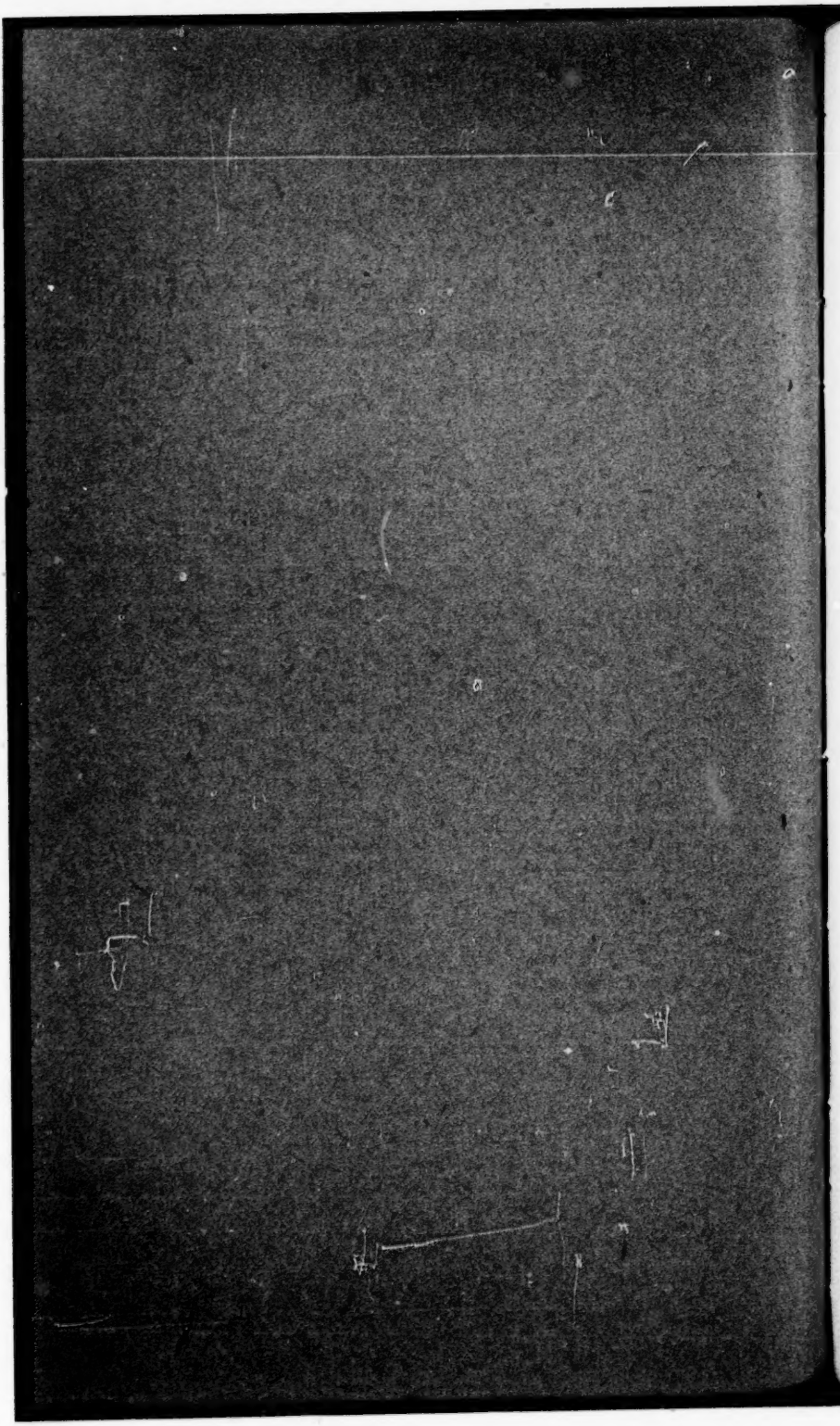
vs.

JOHN S. WILLIAMS, TRUSTEE IN BANKRUPTCY OF ESTATE OF HUDSON CLOTHING COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

FILED AUGUST 22, 1908.

(20,836.)



(20,836.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 169.

JOHN W. MANSON ET AL., TRUSTEES OF ESTATE OF HENRY HUDSON, APPELLANTS,

vs.

JOHN S. WILLIAMS, TRUSTEE IN BANKRUPTCY OF ESTATE OF HUDSON CLOTHING COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

INDEX.

	Original.	Print.
Caption	*a*	1
Transcript from the district court of the United States for the district of Maine	1	1
Petition of trustee	1	1
Exhibit A—Stock in store of Hudson Clothing Company	5	4
B—Petition for private sale	16	14
C—Referee's order, October 8, 1904	16	15
Sheriff's return of service	17	15
Answer of John W. Manson *et al.*, trustees	17	16
Replication	19	17
Record of proceedings before referee	20	18
Preliminary statements	20	18
Evidence for petitioner	21	19
Testimony of James Hudson	21	19
Frank E. Guernsey	33	29
John W. Manson	37	33
Calvin W. Brown	44	38
Wm. A. Burgess	45	40
John A. Rand	47	41
Henry O. Staples	47	42

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 29, 1908.

	Original.	Print.
Offers of exhibits, etc	49	43
Testimony of Calvin W. Brown (recalled)	51	44
Evidence for respondents	52	45
Offers of exhibits, etc	52	45
Testimony of Henry Hudson	54	47
Evidence for petitioner in rebuttal	62	53
Claims proved in estate of Henry Hudson	62	53
Stipulation as to evidence	63	54
Opinion and order of referee	64	54
Petition for review	70	59
Order of reference, July 13, 1906	72	60
Referee's certificate on review	72	61
Opinion of Hale, D. J.	73	62
Decree, November 28, 1906	78	65
Petition for appeal	79	66
Allowance of appeal	79	66
Assignment of errors	80	67
Præcipe for transcript of record by appellants	81	68
Præcipe for transcript of record by appellee	82	69
Petitioner's Exhibit No. 1—Letter with letter-head of Hudson Clothing Co.	84	70
No. 2—Advertisement of Hudson Clothing Co.	84	71
No. 3—Answer of trustees of Henry Hudson estate *In re* petition against Hudson Clothing Co.	85	71
No. 4—Answer, etc., same as above	86	72
No. 5—Letter, November 4, 1904, Guernsey to Hewey, clerk, etc.	87	73
No. 6—Letter, November 8, 1904, Guernsey to Hewey, clerk, etc.	88	74
No. 7—Letter, November 14, 1904, Guernsey to Hewey, clerk, etc.	88	74
No. 8—Letter, July 20, 1905, Manson & Coolidge to Hewey, clerk, etc.	88	74
No. 9—Letter, July 28, 1905, Manson & Coolidge to Hewey, clerk, etc.	89	75
No. 10—Articles of association, etc., dated June 25, 1902	89	75
No. 11—Notes of Hudson Clothing Co. and letters in regard thereto	90	76
No. 12—Judge Hale's opinion, August 18, 1905, *In re* Hudson Clothing Co.	94	79
No. 13—Check-book stubs	96	81
No. 14—First National Bank account with James Hudson and Hudson Clothing Co.	97	82
No. 15—Check stubs and blank checks of Hudson Clothing Co.	101	86
No. 16—Docket entries *In re* The Hudson Clothing Co., alleged bankrupt.	102	86
No. 16a—Creditors' petition *In re* The Hudson Clothing Co., alleged bankrupt	103	87

	Original.	Print.
Petitioner's Exhibit No. 17—Adjudication of bankruptcy of Hudson Clothing Co.	106	91
No. 18—Letter, June 7, 1902, Hudson to Rand	107	91
Nos. 19, 20, 21, 22, and 23—Advertisements of Hudson Clothing Co.	108	92
No. 24—Copy of record of trustee's appointment	110	94
No. 25—Guaranty, April 9, 1904, Henry Hudson to William N. Prince & Co.	111	95
Respondents' Exhibit No. 1—Letter, August 17, 1902, W. N. Prince & Co. to Henry Hudson	111	95
No. 2—Letter, September 2, 1902, W. N. Prince & Co. to Henry Hudson	112	95
No. 3—Letter, March 27, 1903, W. N. Prince & Co. to Hudson Clothing Co	112	96
No. 4—Letter, April 9, 1903, W. N. Prince & Co. to Hudson Clothing Co	112	96
No. 5—Letter, April 14, 1903, W. N. Prince & Co. to Henry Hudson	113	96
No. 6—Letter, April 21, 1903, W. N. Prince & Co. to Hudson Clothing Co	113	97
No. 7—Letter, April 5, 1904, W. N. Prince & Co. to Henry Hudson	113	97
No. 8—Letter, September 15, 1903, A. B. Kirschbaum & Co. to Henry Hudson	114	97
No. 9—Letter, January 21, 1904, A. B. Kirschbaum & Co. to Henry Hudson	114	98
No. 10—Unsigned guaranty to A. B. Kirschbaum & Co. in favor of Hudson Clothing Co	115	98
No. 11—Letter, February 8, 1904, A. B. Kirschbaum & Co. to Henry Hudson	115	99
No. 12—Letter, March 3, 1904, A. B. Kirschbaum & Co. to Hudson Clothing Co	116	99
No. 13—Letter, March 29, 1904, A. B. Kirschbaum & Co. to Henry Hudson	116	100
No. 14—Letter, April 4, 1904, A. B. Kirschbaum & Co. to Henry Hudson	117	100

	Original.	Print.
Respondents' Exhibit No. 15—Letter, April 4, 1904, J. M. Arnold Shoe Co. to Henry Hudson	117	101
No. 16—Letter, April 9, 1904, J. M. Arnold Shoe Co. to Henry Hudson	118	101
No. 17—Letter, April 26, 1904, J. M. Arnold Shoe Co. to Henry Hudson	118	101
No. 18—Letter, April 30, 1904, J. M. Arnold Shoe Co. to Henry Hudson	118	101
No. 19—Letter, May 3, 1904, J. M. Arnold Shoe Co. to Henry Hudson	119	102
No. 20—Letter, May 21, 1904, J. M. Arnold Shoe Co to Henry Hudson	119	102
No. 21—Letter, May 7, 1904, Tremont Rubber Co. to Henry Hudson	119	102
No. 22—Letter, March 16, 1904, Joseph Banigan Rubber Co. to Henry Hudson	120	102
No. 23—Letter, June 29, 1904, Banigan Rubber Co. to Henry Hudson	120	103
No. 24—Letter, October 21, 1903, Byron Greenough & Co. to Henry Hudson	121	103
No. 25—Letter, April 24, 1903, Robinson-Blake Co. to Hudson Clothing Co	121	104
No. 26—Letter, March 25, 1903, Robinson-Blake Co. to Hudson Clothing Co	121	104
No. 27—Letter, May 15, 1903, Robinson-Blake Co. to Henry Hudson.	122	104
Order as to transcript of record on appeal	122	105
Citation	123	106
Acceptance of service of citation	124	106
Clerk's certificate	124	107
Opinion	127	107
Decree	137	114
Affidavit of value	139	114
Petition for appeal	141	115
Order allowing appeal	143	116
Assignment of errors	145	116
Bond on appeal	149	117
Citation	153	119
Acceptance of service of citation	154	119
Clerk's certificate	155	119

a United States Circuit Court of Appeals for the First Circuit, October Term, 1906.

No. 688.

JOHN W. MANSON ET AL., Trustees of Estate of Henry Hudson, Appellants,
v.
JOHN S. WILLIAMS, Trustee of Estate of Hudson Clothing Company, Appellee.

Appeal from the District Court of the United States for the District of Maine, from Decree (Hale, J.), November 28, 1906.

Transcript of Record.

Upon the Appeal of John W. Manson *et al.*, Trustees in the Above-entitled Cause, to the Supreme Court of the United States.

1 United States Circuit Court of Appeals for the First Circuit, October Term, 1906.

No. 688.

JOHN W. MANSON ET AL., Trustees of Estate of Henry Hudson, Appellants,
v.
JOHN S. WILLIAMS, Trustee of Estate of Hudson Clothing Company, Appellee.

Transcript of Record of District Court.

[Filed in Circuit Court of Appeals January 4, 1907.]

Petition of Trustee.

[Filed July 20, 1906.]

In the District Court of the United States for the District of Maine. In Bankruptcy.

In the Matter of HUDSON CLOTHING COMPANY, a Copartnership Consisting of Henry Hudson and James Hudson, Bankrupt.

To John F. Sprague, Esquire, Referee in Bankruptcy of said District Court:

Respectfully represents John S. Williams, of Guilford, in the county of Piscataquis and State and District of Maine, the trustee in bankruptcy of the estate of said Hudson Clothing Company, as follows:—

2 1. That on the twenty-second day of October, A. D. 1904, an involuntary petition in bankruptcy was filed in said District Court against said Hudson Clothing Company, as a copartnership consisting of said Henry Hudson and James Hudson, by divers creditors of said copartnership, upon which petition said copartnership was duly adjudicated a bankrupt on the seventeenth day of June, A. D. 1905, and said case was referred to your Honor as referee.

2. That your petitioner was on the eighteenth day of September, A. D. 1905, appointed trustee of the estate of said bankrupt, that on said eighteenth day of September he filed a bond as said trustee which was on the same day duly approved, and that ever since said eighteenth day of September he has been and is now the duly appointed and qualified trustee of the estate of said Hudson Clothing Company.

3. That on the fourteenth day of July, A. D. 1904, a voluntary petition in bankruptcy was filed in said District Court by said Henry Hudson, upon which petition said Henry Hudson was adjudicated a bankrupt on the eighth day of August, A. D. 1904.

4. That on August 23, 1904, John W. Manson, of Pittsfield, in the county of Somerset, and State and District of Maine, Albert W. Chapin, of Monson, in the county of Piscataquis, in said State and district, and Freeman D. Dearth, of Dexter, in the county of Penobscot, in said State and district, were duly appointed trustees in bankruptcy of the estate of said Henry Hudson.

5. That the bond of said trustees was duly approved on September 19, 1904, and that ever since said September 19, said John W. Manson, Albert W. Chapin and Freeman D. Dearth have been, and they now are, the duly appointed and qualified trustees in bankruptcy of the estate of said Henry Hudson.

6. That for a long time prior to said July 14, 1904, the date of the filing of said petition in bankruptcy by said Henry Hudson, said Hudson Clothing Company carried on the business of retail dealer in clothing, men's furnishing goods and other goods, wares and merchandise in a store at Guilford Village, in said Guilford, and on said July 14, 1904, said Hudson Clothing Company was the owner of a stock of goods, wares and merchandise, then in said store, the value of which at cost prices was approximately $6700.51,
3 and a schedule of which, marked "Exhibit A," is hereto annexed and made a part of this petition, and that said Hudson Clothing Company continued to be the owner of said goods, wares and merchandise from said July 14, 1904, to the date of the selling of the same by said trustees of the estate of said Henry Hudson as hereinafter set out.

7. That said trustees of the estate of said Henry Hudson, after their qualification as said trustees, took possession of said stock of goods, wares and merchandise, claiming said stock as a part of the estate in bankruptcy of said Henry Hudson, and afterwards filed with Referee John F. Sprague, the referee to whom said Henry Hudson case had been referred, a petition, bearing date of September 20, 1904, a copy of which is hereto annexed, marked "Exhibit B,"

and made a part of this petition, praying for authority to sell said stock of goods, wares and merchandise at private sale.

8. That on October 8, 1904, said Referee John F. Sprague issued an order authorizing said trustee of the estate of Henry Hudson to sell at private sale the property specified in said petition, to wit, said stock of goods, wares and merchandise, a copy of which order is hereto annexed, marked "Exhibit C," and made a part of this petition.

9. That the appraisers of the estate of said Henry Hudson appraised said stock of goods, wares and merchandise at the sum of six thousand two hundred thirty-four dollars ($6234), the several items making up said total amount being shown on said schedule of goods hereto annexed, marked "Exhibit A."

10. That after said October 8, 1904, and prior to said October 22, 1904, said trustee of the estate of said Henry Hudson sold said stock of goods and received therefor the sum of thirty-five hundred dollars ($3500), and that, as said trustees, they now have, and ever since the date of said sale of said stock have had all of said money in their possession or under their control.

11. That all of said money, to wit, the said sum of thirty-five hundred dollars ($3500) is, in fact, a part of the estate in bankruptcy of said Hudson Clothing Company.

12. That on or about the twenty-first day of September, A. D. 1905, your petitioner, in his capacity of trustee of the estate of said Hudson Clothing Company, notified each of said trustees of
4 the estate of said Henry Hudson that he claimed said money as a part of the estate of said Hudson Clothing Company, and at the same time made demand upon them, as said trustees of the estate of said Henry Hudson, to pay said money to him as said trustee of the estate of said Hudson Clothing Company.

13. Notwithstanding said notice and demand, said trustees of the estate of said Henry Hudson have, and each of them has, neglected and refused to pay said money, or any part thereof, to your petitioner.

Wherefore your petitioner prays that an order may be made directing said John W. Hanson, Albert W. Chapin and Freeman D. Dearth, as trustees in bankruptcy of the estate of said Henry Hudson, to appear before this court at such time as this court may appoint and make answer to this petition, but not under oath, answer under oath being hereby specifically waived, and that after hearing in the premises an order may be made herein ordering and directing said John W. Manson, said Albert W. Chapin and said Freeman D. Dearth, as said trustees of the estate of said Henry Hudson, to pay over to your petitioner as said trustee of the estate of Hudson Clothing Company all of the money received by them from the sale of said stock of goods, to wit, the sum of thirty-five hundred dollars, together with legal interest thereon from said date of sale of said stock.

Your petitioner also prays that such further orders may be made in the premises as the circumstances of the case may warrant, and that he may be allowed such costs as to your Honor may seem meet.

JOHN S. WILLIAMS,
Trustee of Hudson Clothing Co.

January 24, A. D. 1906.

STATE OF MAINE, *Piscataquis, ss:*

JANUARY 24, 1906.

This day personally appeared the above-named John S. Williams, trustee in bankruptcy of the estate of Hudson Clothing Company, and made oath to the truth of the statements of fact set forth in the foregoing petition by him subscribed.

Before me,

[SEAL.] DAVID R. STRAW,
Notary Public.

5 The foregoing petition having been duly filed before me
It is ordered:

That John W. Manson, Albert W. Chapin and Freeman D. Dearth, the above-mentioned trustees in bankruptcy of the estate of Henry Hudson, be ordered to appear before the undersigned John F. Sprague, Referee, at his office, in Monson, in the county of Piscataquis, in the State and District of Maine, at ten o'clock in the forenoon, on the ninth day of February, A. D. 1906, then and there to make answer to the foregoing petition, and then and there also to show cause, if any they have, why the orders prayed for in the foregoing petition should not be granted.

Let service of this order on said John W. Manson, said Albert W. Chapin and said Freeman D. Dearth be made by delivering to each of them personally a copy of this order duly attested by John F. Sprague, Referee, and a copy of the foregoing petition on which said order is granted, likewise duly attested by said referee, within nine days previous to the day last hereinbefore mentioned.

Dated this thirty-first day of January, A. D. 1906.

JOHN F. SPRAGUE,
Referee in Bankruptcy.

EXHIBIT A.

Stock in Store of Hudson Clothing Company.

5	prs. 1. Tan	$1.00	$5.00
2	" Shoe P.	1.00	2.00
1	pr. Leg. Moc.		2.00
10	prs. Stub Proof Hurons	1.27	12.70
4	prs. " " "	1.07	4.28
20	prs. Ladies Im. Sandals	.34	6.80
17	" Men's Storm—Job	.25	4.25
4	" Foot Soles	.34	1.36
1	" Rubbers		.59
39	" Boys' Rubbers		5.85
2	" Storm Rubber Boots	2.75	5.50
2	" Thigh "	3.65	7.30
4	" Rubber "	1.00	4.00
15	" Overshoes, Job		3.00
30	" Men's Rubbers	.90	27.00
20	" Youth's Rubbers	.60	12.00
4	" Men's R. Boots	2.00	8.00

6

6	prs. Men's Rubbers		$1.00
4	" Buck. Overshoes	$1.50	6.00
12	" Men's Rubbers	.50	6.84
3	" Felt Boots	.62½	1.88
7	" L. T. Cruisers	2.00	14.00
10	" "	1.28	12.80
2	" "	1.80	3.60
5	" Hub Arctics	.90	4.50
4	" Men's St. Rubbers	.57	2.28
4	" Ladies' St. Rubbers	.44	1.76
17	" Leggings	.50	8.50
4	" "	1.00	4.00
9	" "	.20	1.80
11	" Storm Rubbers	.44	13.64
4	" Neptune "	.75	3.00
13	" Saxon Rubbers	.61	7.63
10	" Premium "	.81	8.10
9	" Storm "	.57	5.13
11	" B. Gaiters	1.73	19.03
9	" Neptune	.90	8.10
6	" St. Arctic	.85	5.10
5	Doz. B. Blacking	1.00	5.00
1	1/2 Doz. Gilt E. Blacking	1.00	1.50
3	2/3 " "	1.00	3.67
	10/12 " "	1.00	.83
	7/12 " Shoe Brushes	1.00	.58
6	prs. Driving Shoes	3.00	18.00
1	" "	4.00	4.00
4	" Black Diamond Shoes	2.00	8.00
14	" Men's "	1.20	16.80
3	" Easton "	1.60	4.80
50	" Men's "	1.50	90.00
48	" " "	1.50	72.00
7	" " "	1.25	7.75
20	" " "	2.00	40.00
14	" " "	2.50	35.00
15	" " "	2.00	30.00
3	" " "	1.00	3.00
2	" " "	.75	1.50

Old Stock.

16	prs. Men's Shoes	$.50	$8.00
12	" " "	.50	6.00
3	" Slippers		1.00
6	" Tennis Slippers	.81	4.86
2	" Men's Tennis Slippers	.20	.40
4	" Boy's " "	.30	1.20

1	2/12 Doz. Wool Soles	$2.00	$2.34
	Shoe Strings		2.00
8	Prs. Canvas Oxford	1.00	8.00
5	" " Bals	.40	2.00
2	Prs. Men's Shoes	1.75	3.50
22	" " "	1.00	22.00
18	" " "	1.15	20.70
7	" " "	.80	5.60
5	" " "	1.50	7.50
10	" " "	1.20	12.00
10	" Slippers	.40	4.00
17	" "	1.00	17.00
3	" "	.80	2.40
2	" "	1.50	3.00
14	" Ladies' Shoes	1.60	22.40
6	" " "	1.00	6.00
3	" " "	1.50	4.50
10	" " "	1.60	16.00
34	" " "	1.20	40.80
15	" " "	1.50	22.50
53	" " "	1.00	53.00
8	" " "	2.25	18.00
9	" " "	1.75	15.75
22	" " "	1.15	25.30
14	" Arnold Men's Shoes	2.50	35.00
6	" Colt Skin " "	2.75	16.50
10	" Nap. Pat. " "	2.50	25.00
9	" Pat. Colt Skin Shoes	2.00	18.00
11	" Men's "	2.25	24.75
11	" "	1.00	17.00
6	"	1.85	11.10
4	" Top. Round	2.00	8.00
20	"	1.15	23.00
16	"	1.00	16.00
8	"	1.20	9.60
2	"	1.50	3.00
8	" Moccasins	.75	6.00
10	" "	.80	8.00
4	Prs. Moccasins	1.00	4.00
3	" "	1.20	3.60
7	" "	1.00	7.00
1	" L. Leg Boots, Old Stock	2.25	2.25
7	" Boys' Boots " "	.50	3.50
5	" Men's Shoes " "	.50	2.50
3	" Cloth Slippers " "	.20	.75
5	" " " " "	.10	.50
4	" Slippers " "	.10	.40

8

1	8/12 Doz. Leggings, Old Stock	$1.50		$12.50
	1/3 "	.50		1.50
1	Pr. Men's Shoes			1.20
28	Shirts	9.00	doz.	27.00
55	"	4.50		20.63
15	" Boys	4.00		5.00
C 72	"	5.00		30.00
11	"	4.50		4.13
58	"	4.50		22.20
76	"	4.50		28.50
35	" Imperial	9.00		24.75
C 42	" Metropolitan	5.00		17.50
17	" Presto	12.00		17.00
24	" Dauntless	9.00		18.00
17	" Imperial	9.00		12.75
14	" Hathaway	9.00		10.50
169	" Negligee	4.50		63.38
32	" "	4.50		10.50
75	" Fancy	3.50		21.88
17	" S.	2.50		3.54
12	Night Robes	4.50		4.50
7	" "	9.00		5.25
8	" "	9.00		6.00
6	" "	4.50		2.25
239	Fine Bal.	2.25		42.94
18	Boys	2.00		3.00
307	Underwear	4.50		115.13
32	Summer Merino	4.50		12.00
5	2/12 Doz. Fleeced Underwear	4.50		23.25
2	11/12 " " "	4.50		13.13
10	9/12 " Boys' "	2.25		24.19
1	9/12 " " Outside Shirts	4.50		7.87
	1/2 " Stag Brand	15.00		7.50
	1/3 " " "	12.00		4.00
2	1/2 " Jersey	9.00		22.50
	1/2 " "	6.00		3.00
	1/3 " Woolen Shirts	12.00		4.00
2	11/12 " Woolen Shirts	4.00		11.67
1	" " "	4.50		4.50
1	" Scarlet Underwear	9.00		9.00
	1/2 " Wright's "	9.00		4.50
3	1/4 " Lambs Wool	9.00		29.25
1	1/2 " Outing Shirts	4.50		6.75
11	10/12 " Men's Shirts	4.50		53.25
	8/12 " Boys "	2.25		1.50
2	1/4 " Jersey "	4.50		10.13
1	2/3 " Sweaters	9.00		15.00

	11/12	Doz.	Sweaters		$4.50	$4.12
	5/12	"	"		5.00	2.00
	11/12	"	Under Shirts		4.50	4.12
	2/3	"	Sweaters		24.00	16.00
	1/2	"	"		15.00	7.50
1	1/2	"	"		4.50	6.75
	1/2	"	"		12.00	6.00
	1/2	"	"		18.00	9.00
	1/3	"	"		9.00	3.00
	2/3	"	"		15.00	10.00
	1/12	"	"		22.00	1.83
	1/6	"	Prs. Drawers		9.00	1.50
1	1/2	"	"	"	2.25	2.44
	2/3	"	"	"	4.50	3.00
1	2/12	"	Union Suits		9.00	10.50
	2/12	"	Shirts		6.00	1.00
	1/12	"	Cardinal Jackets		9.00	.75
4	2/12	"	Braces		2.00	8.17
3		"	"		4.50	13.50
1	5/12	"	"		1.25	1.77
13		"	Shield Bows		.50	6.50
2		"	"		2.00	4.00
C 6		"	String Tie		.25	1.50
C 2		"	Golf Stocks			
C 1		"	Shield Bows		1.25	1.25
C 2		"	"		1.00	2.00
C 3	1/2	"	Cravats		1.00	3.50
	1/2	"	W. Ties		1.25	.63
	1/2	"	"	"	2.00	1.00
1		"	"	"	2.00	2.00
2		"	"	"	2.00	4.00
2		"	"	"	1.00	2.00
2		"	"	"	1.00	2.00
1		"	"	"	2.00	2.00
	1/2	"	"	"	4.50	2.25
1		"	Elastic			.60
	5/12	"	Coat Spring		.35	.15
	1/2	"	Cuff Holders		.75	.38
	11/12	"	Drawers Holders		.35	.35
6		"	Collar Buttons		2.00	12.00
23		"	"		.03	.69
1	1/4	"	Belts		4.50	5.63
2	2/12	"	"		2.00	4.33
2	2/3	"	Handkerchiefs		.62½	1.67
7	1/3	"	"		.35	2.57
2	1/2	"	"		.85	2.13
7	Prs.		Woolen Gloves		4.50 D.	2.63

10

14	Prs. Canvas Gloves	$2.00	D.	$2.33
4	" "	9.00	"	3.00
3	" "	4.50	"	1.50
5	" "	2.00	"	.83
6	" "	4.50	"	2.25
12	" "	4.50	"	4.50
11	" "	4.50	"	4.12
6	" Mitts	4.50	"	2.25
6	" Gloves	4.50	"	2.25
6	" "	9.00	"	4.50
18	" "	4.50	"	6.75
13	" "	9.00	"	9.75
28	" "	4.50	"	10.50
29	" "	1.00	"	2.42
13	" "	9.00	"	9.75
80	" "	4.50	"	30.00
5	" "	12.00	"	5.00
15	" "	9.00	"	11.25
3	" "	12.00	"	3.00
1	" "	9.00	"	.75
8	" "	2.00	"	1.33
10	Doz. Prs. Gloves	.85	"	8.50
30	"	9.00	"	22.50
12	" Wool Mitts	4.00	"	4.00
5/12	Doz. Men's Socks	2.00		.83
5/12	" " "	4.50		1.88
2/12	" " Leggings	12.00		2.00
3/12	" " Drawers	12.00		3.00
3/12	" Ladies Leggings	9.00		2.25
2/12	" " "	6.00		1.00
2	" " Hose	.50		1.00
7/12	" Oil Suits	12.00		7.00
2	Dress Suit Cases	.90		1.80
1	Ex. "	.90		.65
9/12	Doz. Shirts	9.00		6.75
2/12	" "	.90		.15
13 1/4	" Boys Hose	2.00		26.50
15 5/12	" " "	1.15		17.73
20 11/12	" " "	2.00		41.83
14 10/12	" " "	1.10		16.32
1/2	" Men's "	4.50		2.25
6	" " "	2.00		12.00
10	Boxes Raph. Collars			1.00
4	" " "			.40
4	Doz. Waterproof Collars	.60		3.20
41 7/12	Doz. B. & T. Brand Collars	.80		33.27

11

	7/12	Doz.	Pharosteen Brand Collars...	$1.50	$ .88
41	8/12	"	" (Out of date)		
1	1/2	"	Combs	.35	.53
1		"	Scarfs	2.00	2.00
2		"	Handkerchiefs	.35	.70
6		"	"	.60	3.60
	1/3	"	Ear Protectors	2.00	.67
3	1/2	"	Blanket Pins	.40	1.40
2		"	Cuffs	2.00	4.00
	1/2	"	" (Out of date)		
	1/2	"	Arm Bands	.75	.38
2		"	Cuff Holders	.75	1.50
5		"	B. Pins	.35	1.75
8		"	B. Pins	.02	.16
1	3/4	"	Straw Hats	12.00	21.00
	2/12	"	" "		2.50
	11/12	"	" "		11.00
	9/12	"	" "		6.75
2	5/12	"	" "		10.87
2		"	" "		4.00
	7/12	"	" "		14.00
	5/12	"	" "		2.50
11		"	" "	.50	5.50
8		"	Wool Caps	.75	6.00
2	8/12	"	" "	4.50	12.00
	1/2	"	Tams		2.25
	1/2	"	Toques		2.25
	1/2	"	"		1.12
9	Doz.		Summer Caps.....	.25	2.25
8	"		Caps	4.50	34.00
3	8/12	Doz.	Caps.....	2.25	9.25
1	1/2	"	"	4.50	6.75
	9/12	"	Stiff Hats	15.00	11.25
1		"	Hats (New Stock).....	12.00	12.00
4		"	"	15.00	60.00
	10/12	"	"	12.50	11.25
6	3/12	"	"	9.00	56.25
2	8/12	"	"	4.50	12.00
	1/2	"	"	18.00	9.00
2	10/12	"	"	15.00	42.50
9		"	"	12.00	108.00
3		"	" (Odds & Ends)		
	8/12	"	Linen Dusters	10.50	7.00
13		"	Overalls	4.50	58.50
1		"	"		6.50
	7/12	"	Frocks	6.50	3.79
3	8/12	"	"	4.50	16.50

12

1	1/2 Doz.	Boys' Frocks	$4.00	$6.00
4	1/3 "	Overalls	2.25	9.75
1	"	Mason's Frocks	4.25	4.25
	10/12 "	" "	2.25	1.88
1	5/12 "	" "	4.50	6.38
1	7/12 "	" "	2.25	3.56
	1/2 "	Overalls	4.50	2.25
1	"	"	2.25	2.25
	8/12 "	"	1.75	1.16
1	1/12 "	Mufflers	4.50	4.88
	4/12 "	"	2.25	.75
10	Prs.	Pants	1.00	10.00
23	"	"	1.25	28.75
5	"	"	1.50	7.50
9	"	"	1.75	15.75
15	"	"	2.00	30.00
8	"	"	2.50	20.00
	8/12 Doz.	Ch. Suits	9.00	6.00
1	8/12 "	"	4.50	7.50
	4/12 "	"	6.00	2.00
3	Summer	Overcoats	7.50	22.50
6	"	"	7.00	42.00
1	"	"		5.00
3	"	"	9.00	27.00
2	"	"	10.00	20.00
1	"	"		5.50
1	"	"		6.00
3	Winter	"	7.50	22.50
1	"	"		4.00
3	"	"	7.00	21.00
3	"	"	8.00	24.00
2	"	"	3.50	7.00
1	"	"		3.00
1	"	"		5.50
1	"	"		6.50
1	"	"		7.50
1	"	"		8.00
3	"	"	5.75	17.25
1	"	"		8.00
1	"	"		7.50
1	Winter	Overcoat		5.75
	1/2 Doz.	Ch. Suits	15.00	7.50
1	8/12 Doz.	Boys' Pants	2.00	2.67
1	1/2 "	" "	4.50	6.75
9	Children's	Suits	3.00	27.00
2	Children's	Suits	2.50	5.00
7	"	"	2.25	15.75

4	Children's Suits	$2.00	$8.00
4	" "	1.75	7.00
3	" "	1.00	3.00
29	Suits (Rand Stock)	7.50	217.50
7	"	10.00	70.00
7	"	13.00	91.00
1	"		8.00
2	"	12.50	25.00
5	"	10.50	52.50
2	"	11.00	22.00
10	"	9.00	90.00
15	"	5.00	75.00
6	"	6.00	36.00
1	"		11.00
2	"	8.00	16.00
1	"		4.00
14	"	1.50	21.00
23	"	2.00	46.00
7	"	3.50	24.50
5	"	1.75	8.75
5	"	2.50	12.50
1	"		3.00
19	" Damaged	.75	14.25
6	Boys' Suits (Rand S.)	5.00	30.00
3	" "	7.50	22.50
5	" "	6.75	33.75
7	" "	6.00	42.00
5	" "	6.50	32.50
2	" "	3.50	7.00
3	" "	8.00	24.00
6	" "	3.00	18.00
10	" "	2.00	20.00
19	" "	4.00	76.00
6	" "	6.50	39.00
1	" "	7.50	7.50
1	" "	4.00	4.00
3	" "	5.50	16.50
1	" "		7.50
1	" "		5.00
7	" "	3.50	24.50
12	Men's Suits	7.50	90.00
5	" "	5.00	25.00

New Stock.

2	Men's Suits	8.00	16.00
4	" "	10.50	42.00
11	" "	10.00	110.00

14

38	Men's Suits		$7.50	$285.00
1	" "			6.00
20	" "		8.00	160.00
6	" "		10.50	63.00
10	" "		5.00	50.00
5	" "		9.00	45.00
3	" "		3.00	9.00
1	" "			2.38
18	" "		3.50	63.00
1	" "			3.75
9	" "		2.00	18.00
1	" "			2.25
9	" "		1.75	15.75
3	" "		1.50	4.50
2	" "		5.00	10.00
2	" "		2.50	5.00
1	" "			1.25
25	Prs. Men's	Pants	1.50	37.50
16	" "	"	2.50	40.00
60	" "	"	2.00	120.00
10	" "	"	2.25	22.50
4	" "	"	1.00	4.00
12	" "	"	1.25	15.00
3	" "	"	.75	2.25
4	" "	"	1.75	7.00
1	" "	"		3.50
11	" "	"	1.50	16.50
4	" "	"	1.00	4.00
10	" "	"	2.00	20.00
3	" "	"	.75	2.25
1	" "	"		1.25
1	" "	"		2.50
1	" "	"		2.25
1	" "	"		1.75
8	" "	"	2.25	18.00
11	" "	"	2.00	22.00
1	" "	"		2.75
11	" "	"	3.00	33.00
5	" "	"	1.50	7.50
4	" "	"	3.25	13.00
10	" "	"	2.50	25.00
4	" "	"	1.75	7.00
1	" "	"		1.25
2	" "	"	2.00	4.00
1	" "	"		1.25
1	" "	"		1.00
2	" "	"	1.25	2.50

15

4	Prs. Men's Pants	$ .75	$3.00
7	" " "	.30	3.50
12	" Knee Pants	2.00	24.00
7	" " "	1.50	10.50
28	" " "	1.00	28.00
10	10/12 Doz. Knee Pants, Boys	4.50	48.75
3	Men's Vests	1.50	4.50
14	" "	1.00	14.00
2	Linen Suits	2.50	5.00
1	Pr. Pants		1.25
2	Rubber Coats	1.75	3.50
7	Boys' Overcoats	2.50	17.50
1	" "		4.50
1	" "		3.50
1	" "		1.00
1	" "		1.00
1	" "		1.50
2	" "		3.50
1	" "		4.50
1	" "		4.00
2	" "		3.50
4	" "	3.00	12.00
1	" "		4.00
3	" " and Reefer	2.50	7.50
6	" "	2.00	12.00
5	" "	1.50	7.50
3	Men's Vests	2.00	6.00
2	Boys' Overcoats	3.50	7.00
5	Men's Reefers	3.00	15.00
1	" "	2.00	2.00
6	Everlasting Coats	1.50	9.00
39	Suits on counter in back store	2.00	78.00
2	Prs. Pants	1.50	3.00
4	Coats	.50	2.00

16 EXHIBIT B.

Petition for Private Sale.

In the District Court of the United States for the District of Maine.
In Bankruptcy.

In the Matter of HENRY HUDSON, Bankrupt.

Respectfully represents J. W. Manson, Albert W. Chapin, and F. D. Dearth, duly appointed trustees of the estate of the aforesaid bankrupt:

That for the following reasons, to wit, depreciation in value of the stock of goods which would result in selling the same, it is desirable and for the best interests of the estate to sell at private sale a

certain portion of the said estate, to wit, the stock of goods now in the store at Guilford Village, formerly occupied by the Hudson Clothing Company.

Wherefore they pray that they may be authorized to sell the said property at private sale.

Dated this twentieth day of September, A. D. 1904.

J. W. MANSON,
ALBERT W. CHAPIN,
F. D. DEARTH,
Trustees.

EXHIBIT C.

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing said trustees in favor of said petition, and John S. Williams in opposition thereto, it is ordered that the said trustees be authorized to sell the portion of the bankrupt estate specified in the foregoing petition at private sale, keeping an accurate account of each article sold and the price received therefor, and to whom sold; which said account he shall file at once with the referee.

Witness my hand this eighth day of October, A. D. 1904.

JOHN F. SPRAGUE, *Referee.*

17 [The heading to this Certificate—the Court and Title of the Case—is the same as the heading to the Petition of Trustee on page 1, and is omitted in printing this record.—JOHN G. STETSON, *Clerk.*]

I hereby certify that on the second day of February, A. D. 1906, I delivered personally a true copy duly attested by J. F. Sprague, referee, of the foregoing petition, exhibits attached thereto, and the order of the court thereon, to John W. Manson, F. D. Dearth and Albert W. Chapin.

JOHN R. FLINT,
Deputy Sheriff.

STATE OF MAINE,
County of Piscataquis, ss:

FEBRUARY 3, 1906.

Subscribed and sworn to before me.

JOHN F. SPRAGUE,
Referee in Bankruptcy.

Fees.

Service on J. W. Mason	$ .50
Travel 122 miles	7.32
Services on F. D. Dearth	.50
Travel	.12
Services on A. W. Chapin	.50
Travel	.12
Total	$9.86

Answer of John W. Manson, Albert W. Chapin and Freeman D. Dearth, Trustees of Henry Hudson.

[Filed July 20, 1906.]

[The heading to this Answer—the Court and Title of the Case—is the same as the heading to the Petition of Trustee on page 1, and is omitted in printing this record.—JOHN G. STETSON, *Clerk.*]

The answer of John W. Manson, Albert W. Chapin and Freeman D. Dearth, trustees in bankruptcy of the estate of Henry Hudson, to the complaint and petition of John S. Williams, trustee in bankruptcy of the estate of the Hudson Clothing Company.

1. As to paragraph 1 in the complainant's bill and petition, the said trustees of the estate of Henry Hudson admit that an involuntary petition in bankruptcy was filed in the District Court of Maine against the Hudson Clothing Company, as alleged, and that upon such proceedings said copartnership was adjudicated a bankrupt on the date therein stated, and said case was referred to your Honor as referee; but the said trustees of the estate of Henry Hudson
18 say that they were not a party to said proceedings, nor recognized as such party, and that the decisions in said case are not binding upon them as such, and they here and now deny that there was any such partnership consisting of Henry Hudson and James Hudson under the name of the Hudson Clothing Company, and, if there was such a partnership, that it had any reference or claim to the assets or property in this complaint hereinafter referred to.

2. In answer to paragraph 2 of the petition of said Williams, trustee, said Manson, Chapin and Dearth, trustees, admit the allegations therein contained.

3. All the allegations of paragraph 3 are hereby admitted.

4. All the allegations contained in paragraph 4 are hereby admitted.

5. All the allegations contained in paragraph 5 are hereby admitted.

6. Said Manson, Chapin and Dearth deny all the allegations contained in paragraph 6, but they do say that Henry Hudson, of whose estate in bankruptcy they are trustees, did own on the fourteenth day of July, A. D. 1904, and a long time prior thereto had owned, a stock of goods, wares and merchandise, and had been and then was carrying on a business under the name of Hudson Clothing Company, to the value of from three thousand dollars to thirty-five hundred dollars.

7. As to paragraph 7, said trustees of the estate of Henry Hudson say that after their qualification as trustees they did take possession of the stock of goods which had been owned by said Henry Hudson, claiming it as a part of his estate in bankruptcy, and did afterwards file with the referee a petition dated September 20, 1904, a copy of which is annexed to the bill of said Williams, trustee, in which peti-

tion they prayed for authority to sell said stock of goods, etc., at private sale; but the said trustees of the estate of Henry Hudson deny that they ever took possession of any stock of goods, wares and merchandise belonging to a partnership composed of Henry Hudson and James Hudson, and doing business under the name of the Hudson Clothing Company.

8. As to paragraph 8, the said trustees of Henry Hudson admit that on October 8, 1904, Referee John F. Sprague issued an
19 order authorizing them, the said trustees of the estate of Henry Hudson, to sell at private sale the said certain stock of goods belonging to the estate of Henry Hudson, and not to the estate of a partnership consisting of Henry Hudson and James Hudson.

9. As to paragraph 9, the said trustees of Henry Hudson deny the allegation of the appraisal as therein set out of the goods, wares and merchandise belonging to the estate of Henry Hudson.

10. As to paragraph 10, all the allegations therein contained are admitted by the trustees of the estate of Henry Hudson, except that said trustees of Henry Hudson aver that the stock of goods that were sold was the property of and belonged to the estate of Henry Hudson.

11. That said trustees of the estate of Henry Hudson deny the allegations of paragraph 11, and say that the money is, in fact, the property of the estate in bankruptcy of Henry Hudson individually; and furthermore deny that any such copartnership as the Hudson Clothing Company, composed of Henry Hudson and James Hudson, ever existed.

12. The said trustees of the estate of Henry Hudson deny all the allegations contained in paragraph 12.

13. The said trustees of the estate of Henry Hudson admit the allegations contained in paragraph 13.

Wherefore the said trustees of the estate of Henry Hudson pray that the petition of the said Williams be dismissed, and for their costs.

JOHN W. MANSON,
ALBERT W. CHAPIN,
FREEMAN D. DEARTH,
Trustees of the Estate of Henry Hudson in Bankruptcy.

Replication.

[Filed July 20, 1906.]

The replication of John S. Williams, trustee in bankruptcy of the estate of Hudson Clothing Company, plaintiff, to the answer of John W. Manson, Albert W. Chapin and Freeman D. Dearth, trustees in bankruptcy of the estate of Henry Hudson, defendants.

20 This repliant, saving and reserving to himself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the

answer of said defendants, for replication thereunto saith that he doth and will aver, maintain and prove his petition to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of said defendants is uncertain, untrue, evasive and insufficient in law to be replied unto by this repliant; without this, that any other matter or thing in the said answer contained, material or effectual in law to be replied unto, confessed or avoided, traversed or denied is true; all which matters and things this repliant is and will be ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in his petition he hath already prayed.

JOHN S. WILLIAMS, *Trustee.*

Record of Proceedings and Testimony before Referee.

[Filed July 20, 1906.]

In the District Court of the United States for the District of Maine.

In the Matter of HENRY HUDSON & JAMES HUDSON, Copartners, Doing Business under the Firm Name and Style of The Hudson Clothing Company, Bankrupts in Bankruptcy.

On the thirty-first day of January, A. D. 1906, John S. Williams, the trustee herein, filed his petition containing the following prayer:—

That an order be made directing John W. Manson, Albert W. Chapin and Freeman D. Dearth, as trustees in bankruptcy of the estate of Henry Hudson, bankrupt, to appear before this court at such time as this court may appoint and make answer to said petition, but not under oath, answer under oath being specifically waived, and that after hearing in the premises an order may be made herein ordering and directing said John W. Manson, Albert W. Chapin and Freeman D. Dearth, as said trustees of said
21 Henry Hudson, to pay over to said petitioner as said trustee of the estate of the Hudson Clothing Company all of the money received by them from the sale of said stock of goods, to wit, the sum of thirty-five hundred dollars ($3500), together with legal interest thereon from said date of sale of said stock.

And also further praying that such further orders be made in the premises as the circumstances of the case may warrant, and that he be allowed such costs as may seem meet.

On the twelfth day of February, A. D. 1906, the answer of John W. Manson, Albert W. Chapin and Freeman D. Dearth, said trustees of the estate of Henry Hudson, bankrupt, in bankruptcy, was duly filed.

Whereupon I made an order that the said trustees of said Henry Hudson, bankrupt, appear before me, at my office, on the ninth day of February, A. D. 1906, at ten o'clock in the forenoon, to show cause, if any they have, why the orders prayed for in said petition

should not be granted, which order was duly served on the trustees by J. R. Flint, deputy sheriff.

On the twelfth day of February, A. D. 1906, the answer to the said trustees of said estate of Henry Hudson, bankrupt, was filed.

The hearing on said petition and answer has been duly adjourned from time to time, due notice having been given to all of the parties of interest, to the twenty-ninth day of May, A. D. 1906, at ten o'clock a. m., at the court house at Dover, in said district.

On said twenty-ninth day of May, I was present at the time and place fixed by said notice and adjournments and ready to attend to the business of the meeting.

James Hudson, one of the bankrupts herein, was present and submitted to the following examination by the trustee, John S. Williams:

Q. 1. Mr. Hudson, did you, on the twenty-fifth day of July, A. D. 1904, testify before John F. Sprague, referee, in your individual bankruptcy proceedings, that there were incorporation papers made out to incorporate yourself, Henry Hudson and Martha Martin under the name of the Hudson Clothing Company?

[Question objected to and excluded.]

22 Q. 2. Whether or not, Mr. Hudson, you went into the business in 1902, in Guilford?

A. I did.

Q. 3. What line of goods?

A. Ready-made clothing, furnishings, hats, caps, boots and shoes.

Q. 4. What name was used for this concern after you had been in the business?

A. Well, no name was used then. It was understood that it was to be the Hudson Clothing Company.

Q. 5. And when was the name adopted and used?

A. I could not tell exactly.

Q. 6. Shortly after you opened the store?

A. If I bought any goods, I think it was used.

Q. 7. What about advertising?

A. It was not used until later on. That was early in the fall. I might have stated when I first went into business that such a corporation was to be formed.

Q. 8. The name Hudson Clothing Company was used?

A. Yes, sir.

Q. 9. Of whom was the corporation to consist?

A. Heny Hudson and myself. I do not know that I ever mentioned Martha Martin, but possibly I may have.

Q. 10. Then there was to be a corporation formed called the Hudson Clothing Company?

A. Yes, sir.

Q. 11. And to consist of whom?

A. Henry Hudson, myself, and the third party, Martha A. Martin.

Q. 12. And incorporation papers were made out?

A. Supposed to have been. I never saw them.

Q. 13. Soon after you opened this business, whether or not you used letterheads of the Hudson Clothing Company?

A. I could not state just what time, but I did use them.

Q. 14. I show you Exhibit 1 and ask you whether or not that is a letterhead that you used in the Hudson Clothing Company, in your correspondence?

A. It is.

Q. 15. And that was used up to the time of your voluntary bankruptcy proceedings?

A. Yes.

Q. 15½. Whether or not you advertised from time to time in the local papers with a similar heading?

A. I did.

Q. 16. Whether or not there were signs on the store; one
23 on the end and one on the highway?

A. There was one on the end, one on the Abbot road, and one on the Willimantic road.

Q. 17. Whether or not, Mr. Hudson, May 6, 1902, was the time you went into the store?

A. It may have been; some time around the first of May.

Q. 18. Whether or not from that time up to July, 1904, you continued to do business under the name of the Hudson Clothing Company?

A. Yes, I did.

Q. 19. And bought goods under that name?

A. Yes.

Q. 20. Whether or not those goods came marked Hudson Clothing Company?

A. They did.

Q. 21. And were put into the store of the Hudson Clothing Company?

A. Yes.

Q. 22. And put up on the shelves with other goods that were there?

A. Yes.

Q. 23. You did quite a good business?

A. Well, fairly good, but never very rushing.

Q. 24. And kept what you considered a fair line of clothing, boots, shoes, hats, caps and furnishings?

A. Yes.

Q. 25. Whether or not when commercial men came to sell you goods, these goods that you had bought under the name of the Hudson Clothing Company, except what you might have sold, were in the store?

A. As I understand that, when commercial men came I bought goods under the name of the Hudson Clothing Company.

Q. 26. I mean this: In the year 1903, if commercial men came to sell you goods, the goods you bought in 1902, except what you had sold, were on the shelves in the store?

A. Certainly.

Q. 27. And there was nothing to indicate but what that stock was the stock of the Hudson Clothing Company?

A. Not anything to indicate or separate.

Q. 28. If anyone went into the store at any time you were doing business, between the dates mentioned, there was nothing to call their attention to the fact that the goods belonged to any but one concern?

A. Nothing.

Q. 29. And during this period you were doing business under the name of the Hudson Clothing Company?

A. Most of the time.

Q. 30. What part of the time were you not?

24 A. At no part of it. I was buying goods at that time, and all of the goods I bought were bought under the name of the Hudson Clothing Company.

Q. 31. About what would your average stock be that you had in your store between 1902 and July, 1904?

A. Well, about six months in the year, spring and fall, we had quite a large stock, but it reduced between times.

Q. 32. About what would be an average when you had your spring and fall goods?

A. Well, in the spring it might be about $6000, but in the fall it might run down to $4500.

Q. 33. What became of the proceeds that you got from these goods from time to time?

A. My personal expenses and paying for bills contracted before.

Q. 34. And also paying some of the bills of the Hudson Clothing Company?

A. Yes.

Q. 35. And this buying of goods and paying for them so far as you are able, your living expenses and the general conducting of the business was the same as you would conduct any business under any certain name?

A. Yes, with what help I got from Henry.

Q. 36. And that name was the Hudson Clothing Company?

A. It was.

Q. 37. Were the funds received from goods as you sold them, that were in the store prior to May 6, 1902, and the funds that you received from goods that you bought under the name of the Hudson Clothing Company kept together?

A. The first of my going into the business my bank account was kept in my own name. I deposited the funds in my own name up to Sept. 1.

Q. 38. And after that?

A. I think it was the 1st of September my bank account was opened under the name of the Hudson Clothing Company.

Q. 39. And whatever deposits you made were the proceeds of these goods?

A. Yes.

Q. 40. The proceeds of any goods in the store before May 6, 1902, were deposited with the proceeds of all goods under the name of the Hudson Clothing Company?

A. Yes.

Q. 41. And deposited under the name of the Hudson Clothing Company?

A. Yes.

Q. 42. Upon that fund did you draw checks?

A. I did.

25 Q. 43. And drew checks to pay the debts of the Hudson Clothing Company?

A. Yes.

Q. 44. Whether or not, Mr. Hudson, your correspondence was upon paper similar to Exhibit 1, and whether or not you signed "Hudson Clothing Company, James Hudson, Mgr.," in the line of business of the Hudson Clothing Company?

A. All correspondence relating to the business was.

Q. 45. You did all the buying for the Hudson Clothing Company?

A. I did.

Q. 46. And had the management of the business of the store?

A. Yes.

Q. 47. You were in the store under a lease?

A. I could not tell.

Q. 48. Oral or written?

A. I could not tell you as to that. Henry put me in the store when I came from Bangor, and I did not know the conditions of the lease.

Q. 49. Did you pay any rent while you were there?

A. No.

Q. 50. Any credited up to anybody?

A. Not to my knowledge.

Q. 51. When you went into the business, how much money did you pay in?

A. Nothing.

Q. 52. Did you put anything in at any time after you went into the business of the Hudson Clothing Company?

A. Not to amount to anything. I might have had some money to use temporarily.

Q. 53. If you have previously testified before the referee that you put in $1000, whether or not that testimony is correct?

A. I did testify that I put in this $1000, but, come to look it up, I find it in my own personal account. I had deposited it. Some I had loaned to Henry.

Q. 54. You say you used it all for your own personal matters?

A. Principally.

Q. 55. If you have previously testified that you paid C. W. Brown, of Dover, a draft in favor of the David Brothers for $400 for goods from that $1000, whether or not that is correct?

A. It is.

Q. 56. Was that correct?

A. That was correct. I testified to it.

Q. 57. Whether or not you paid out of the $1000 the David Brothers draft for $400?

A. My own personal check.

26 Q. 58. And that was for merchandise?

A. It was a draft for an account in the store of J. A. Rand.

Q. 59. And these were goods that were from there?

A. I suppose so.

Q. 60. And it was a part of the liabilities of the old stock of goods that you took on May 6, 1902?

A. I do not know. It was for Henry's account I paid him the Davis Brothers draft, but I did not know when the goods had been received.

Q. 61. You understood that they were goods that went into the Rand stock that you succeeded to on May 6, 1902?

A. Well, yes.

Q. 62. The proceeds of the stock of goods of the Hudson Clothing Company, up to the time that you changed your bank deposit from your individual account to the account of the Hudson Clothing Company, were deposited in your name?

A. Yes.

Q. 63. And that deposit had for its beginning the $1000 or more that you had brought from Bangor?

A. No; that deposit was previous to that.

Q. 64. I ask you now whether or not you deposited the $1000 that you brought from Bangor, to which you have testified at previous examination, whether or not you deposited that under your individual name, and, together with that, either before or after, up to the time that you changed your bank deposit to the name of the Hudson Clothing Company, I ask you whether or not the proceeds of the stock of goods of the Hudson Clothing Company were not deposited with it and made one deposit?

A. Yes.

Q. 65. So there was nothing in your bank account to show the $1000 separate from the proceeds from the store?

A. No; because it was all deposited in my name.

Q. 66. One general fund?

A. Yes.

Q. 67. And from that fund you paid accounts from time to time on account of the Hudson Clothing Company?

A. Some of the store accounts I did, but I do not know about accounts of the Hudson Clothing Company.

Q. 68. What you could pay at that time?

A. The most of them were old bills contracted before I went into the store that I paid from the fund.

27 [Trustee calls for deposit book of James Hudson and Hudson Clothing Company, which is produced.]

[Calls for check book, with stubs of same, which is produced.]

[Calls for check of James Hudson, which witness cannot find, he says.]

Q. 69. The deposits that you made in the Guilford First National Bank of Guilford to the account of James Hudson included money

that you obtained from the sale of goods of the Hudson Clothing Company?

A. Yes.

Q. 70. That account was from May to Sept. 11?

A. The first account was money I brought from Bangor; that is how I happened to use that check book right along until I got a book of the Hudson Clothing Company.

Q. 71. Whether or not from May 13, 1902, to Sept. 11, 1902, in the account of James Hudson with the First National Bank of Guilford, there were deposits of money received from the sale of the goods that you were conducting under the name of the Hudson Clothing Company?

A. There was.

Q. 72. Whether or not the draft to David Brothers was June 25, 1902?

A. I think it was.

Q. 73. And that was a check drawn on these deposits?

A. Yes.

Q. 74. I find a check to Brown & Dwinell Company, dated July 2, 1902, for $100; that was drawn on these funds, was it?

A. Yes.

Q. 75. And what debt did that pay?

A. An old account. I do not know how it originated.

Q. 76. But on goods that were in the store when you went in on May 6?

A. Yes.

Q. 77. These goods continued to form a part of the stock of the Hudson Clothing Company less what you sold from time to time?

A. I presume they were in the store.

Q. 78. I find a check in favor of the Standard Clothing Company, drawn June 13, 1902, for $14.25. What bill did that pay?

A. One of Rand's.

Q. 79. For goods that were in the store, so far you know, when you took possession May 6?

A. Yes.

28 Q. 80. And on Sept. 11, 1902, the account of James Hudson with the First National Bank of Guilford was changed to the name of the Hudson Clothing Company?

A. Yes; and the first deposit made Sept. 11, 1902.

Q. 81. And the balance of your old account was transferred to the new?

A. The book was never balanced. The first deposit was a general deposit. No balance carried forward.

Q. 82. Do you know whether or not there was a balance left to James Hudson?

A. I do not think there was any to any material amount.

Q. 83. Have you the checks of the Hudson Clothing Company?

A. I do not know where they are. I never paid much attention to cancelled checks.

[Check book of Hudson Clothing Company called for and produced, also bank account of Hudson Clothing Company.]

Q. 84. Sept. 10, 1902, a check was drawn for $24.50 to A. H. Benoit. What was that for?

A. For clothing I had bought.

Q. 85. For the Hudson Clothing Company?

A. No; for my family. Shirts.

Q. 86. That was deducted from your deposit under the name of the Hudson Clothing Company?

A. Yes.

Q. 87. Mr. Hudson, what was the date of your last check drawn on account of the Hudson Clothing Company?

A. I think June 11, 1904, to Robinson-Blake Company, for $100.

Q. 88. Mr. Hudson, as near as you can remember, how near to May 6, 1902, did you assume the name of the Hudson Clothing Company for the business?

A. I could not tell exactly just when it was. I presume the name originated in my mind when I started from Bangor.

Q. 89. The name was taken very soon after you opened the business?

A. Yes, sir.

Q. 90. So that if you have previously testified that when you went into the business on May 6, 1902, the name of the Hudson Clothing Company was taken as the name under which the business was to be transacted that testimony was correct?

A. It was correct. It was to be incoroporated under the name of the Hudson Clothing Company.

29 Q. 91. What books were kept outside of the bank account?

A. There was a day book and ledger.

Q. 92. Any day sales book?

A. Well, only the day book. I had no day sales book.

Q. 93. Have you those books here?

A. No, I have not.

Q. 94. Will you get these books and turn them over to me as trustee?

A. They are in the hands of the trustees of Henry Hudson's estate.

[The trustee of the Hudson Clothing Company makes demand upon witness for the books of the Hudson Clothing Company, and refers the same to the referee for action.]

Q. 95. At the time of your bankruptcy proceedings, July 1, 1904, how much did the stock of the Hudson Clothing Company amount to?

A. I do not know; I never took an inventory.

Q. 96. Whether or not the stock of the Hudson Clothing Company at the time that you stopped business, July 1, 1904, was approximately $6000?

A. I have no way of knowing, as I took no inventory, just my own judgment.

Q. 97. Would you say it was much less than that?

A. I could not say. Of course, the clothing in the store kept changing in style and were not worth as much as the year before.

Q. 98. Whether or not the cost price of the stock of goods of the Hudson Clothing Company would be about $6000?

A. I should say so.

Q. 99. Whether or not the Hudson Clothing Company was owing, at that time, debts to the amount of $8948.14?

A. I could not say.

Q. 100. I show you your schedule in bankruptcy and call your attention to the debts and liabilities headed Hudson Clothing Company and ask you the totals.

A. $8948.14.

Q. 101. Whether or not a considerable portion of this stock of goods that was in the store July 1, 1904, was represented by the liabilities that you put into your schedules under the name of the Hudson Clothing Company?

A. Yes, to a certain amount.

Q. 102. How much was the capital of the Hudson Clothing Company to be?

A. $10,000.

30 [All irrelevant letters written upon stationery having the same heading as Exhibit 1, signed by James Hudson to James Hudson, Mgr. of the Hudson Clothing Company, in the handwriting of James Hudson, is hereby annexed and made a part of this examination.]

Q. 103. Mr. Hudson, in the year 1904, month of October, you bought out or bought from the trustees of Henry Hudson estate the former stock of the Hudson Clothing Company?

A. Yes.

Q. 104. And sold that from your store in Guilford?

A. Yes.

Q. 105. I show you the Guilford *Recorder*, dated Oct. 13, 1904, marked "Exhibit 2," and call your attention to the advertisement of the James Hudson Company, and ask you whether or not you wrote that advertisement, based upon that stock of goods bought of the trustees of Henry Hudson estate, being the former stock of the Hudson Clothing Company?

A. Yes.

Cross-examination by JOHN W. MANSON, Trustee of Henry Hudson Estate:

X Q. 106. From the first day of May, A. D. 1902, down to the present time, have you ever been in partnership with Henry Hudson under the name of the Hudson Clothing Company; if down to the present time there have been any written articles between you two?

A. No.

[Trustee, J. S. Williams, objects. Admitted.]

X Q. 107. Were there any oral agreements between you and Henry Hudson to form a copartnership?

A. No.

X Q. 108. Was there any understanding between you and Henry Hudson to form a copartnership?

A. No.

[Trustee objects to all questions relating to copartnership. Admitted.]

X Q. 109. Did you and Henry Hudson ever do business as copartners after May, 1902?

A. No.

X Q. 110. Since May, 1902, has there been any partnership between you and Martha Martin, either associated with or without Henry Hudson?

A. No.

X Q. 111. Have there been any written or oral agreements
31 between you and Martha Martin, associated with or not associated with Henry Hudson, as to a copartnership?

A. No, sir. Not any.

X Q. 112. Whether or not as between you and Henry Hudson and Martha A. Martin, or between any two of these three parties of which you were one, there has been any written or oral agreements?

A. Not any.

X Q. 113. Or any understanding or intention to form or to do business as copartners?

A. No.

X Q. 114. Did you ever have any understanding with the Hudson Clothing Company of forming a copartnership?

A. No, only a corporation.

X Q. 115. Something has been said about some of your own money deposited at times under the name of James Hudson up to Sept. 11, and the use you made of that money. Now, I will ask you whether all the money that was yours and deposited from your funds was used for your own individual benefit before Sept. 11?

A. I should say yes.

X Q. 116. And by your own individual benefit I included sums that you might have loaned to Henry Hudson?

A. Yes.

[Trustee objects. Admitted.]

X Q. 117. Now, were there certain sums that Henry Hudson owed for the Rand stock of goods, or certain guarantees of payment that he had made on account of the Rand stock of goods, that you did pay at the request of Henry Hudson and from your own money?

A. Yes.

[Trustee objects. Admitted.]

X Q. 118. Was that as a loan to Henry Hudson?

A. I presume it was.

X Q. 119. Was this David Brothers' bill?

A. Yes.

X Q. 120. Paid to Calvin W. Brown?
A. Yes.
X Q. 121. What was the amount of that bill?
A. I think the check was $300.
X Q. 122. And that was a bill that Henry Hudson owed before you commenced to do business, and which he guaranteed to pay?
A. I do not know. He wanted me to pay the draft.

[Trustee objects. Admitted.]

X Q. 123. So that on the tenth day of September, 1902,
32 you actually had no money of your own in the business of the Hudson Clothing Company?
A. Not any.

[Trustee objects. Admitted.]

X Q. 124. You had drawn the money you had in?
A. Yes.
X Q. 125. Whether or not since that time you have ever paid any in?
A. No.
Q. 126.

Redirect examination by JOHN S. WILLIAMS, Trustee:

Q. 127. Mr. Hudson, in regard to what my brother Manson is pleased to call loans to Henry Hudson, I ask you whether or not those sums of money that were borrowed between the dates May 6 and Sept. 11, 1902, were paid for the goods considered to be a part of the Rand stock?
A. No, sir. I do not know what the draft was for. Henry came to me with Calvin W. Brown and wanted to know if I could give him the money to pay for the draft.
Q. 128. And who was Brother Brown going to sue for the David Brothers?
A. Henry.
Q. 129. What was the debt for?
A. It was a draft.
Q. 130. Was it for merchandise?
A. I think so.
Q. 131. In what was the Davis Brothers dealing?
A. Clothing.
Q. 132. So that you have no doubt but what it was one of the bills that J. A. Rand contracted for goods that passed to you on May 6, 1902?
A. No doubt whatever.
Q. 133. Did you charge up to the individual account of Henry Hudson those so-called loans?
A. No; I did not.
Q. 134. Did you have any account with Henry Hudson in your store books?
A. Yes.
Q. 135. What was that account?

A. A general running account.

Q. 136. Goods he had out of the store?

A. Yes.

Q. 137. And you never charged him with those sums of money that you paid, as shown by your bank books?

A. I think I charged him with $100 draft.

Q. 138. Please give the stenographer the name of the drawee.

A. Henry Hudson.

Q. 139. I am asking you between the dates of May 6 and
33 Sept. 11, 1902, what you paid out of your money?

A. I could not tell from memory.

Q. 140. Whatever amounts he asked you to pay were in your judgment for goods due in the Rand stock?

A. Yes.

Q. 141. You succeeded to this stock of goods immediately after J. A. Rand left, did you not?

A. Yes.

John S. Williams stated that the grounds for all of the objections made by him and noted by the stenographer in this examination were that all questions concerning any partnership between Henry Hudson and James Hudson under the firm name and style of the Hudson Clothing Company have been previously decided by the court and are now *res judicata*.

FRANK E. GUERNSEY and JOHN W. MANSON were called as witnesses by Mr. Williams and testified as follows:

Examination of FRANK E. GUERNSEY:

Q. 1. Brother Guernsey, whether or not in 1904 you were cognizant of a petition being filed by Robinson-Blake Company, J. H. Arnold Shoe Company and Crosby & Dwinell against Henry and James Hudson, alleged to be copartners under the name of the Hudson Clothing Company?

A. I think so.

Q. 2. Whether or not there was an answer filed to that petition by the trustees of Henry Hudson's estate in bankruptcy?

A. I think as attorney for the trustees I offered to file one.

Q. 3. Whether or not you entered your name as attorney for the trustees of Henry Hudson's estate in this matter, on or about November 4, 1904?

A. Impossible for me to say without examining my books.

Q. 4. I show you petitioner's Exhibit 5, and ask you whether or not that is a copy of a letter that you wrote the United States Court on or about November 4, 1904?

A. Yes.

Q. 5. I show you petitioner's Exhibit 6, and ask you whether or not it is a copy of a letter that you wrote on the eighth day of November, 1904, to the United States Court, at Portland, Maine?

A. I have no doubt but what I wrote it, but I cannot find the copy.

Q. 6. I show you petitioner's Exhibit 7, and ask you
34 whether or not that is a copy of a letter written by you November 14, 1904, to the United States Court, at Portland, Maine?

A. Yes.

Q. 9. Whether or not about the time these letters were written, there was a hearing before Judge Hale in this matter, at which you were present with myself and A. S. Woodman, in which these answers of the trustees of the estate of Henry Hudson in bankruptcy were considered?

A. There were two hearings that I attended at Portland, at one of which these answers were before the court.

Q. 10. And you attended these hearings as attorney for the trustees of the estate of Henry Hudson in bankruptcy?

A. At the first meeting, I attended for the trustees of Henry Hudson's estate.

Q. 11. On what date was that?

A. My recollection is November 5.

Q. 12. Have you a charge of that date against the estate of Henry Hudson, or the trustees of the estate of Henry Hudson, for services performed on that date?

A. I have a charge under date of November 5, for appearance in District Court, charged to Henry Hudson's estate.

Q. 13. Have you a later charge against the same estate in the month of November or December in regard to appearance before District Court, or any matters connected with the case in hand?

A. There are later charges, but I am unable to say whether they were for appearance or not.

Q. 14. Can you tell from the amount thereof whether or not they might be for such purposes?

A. It is impossible for me to state from the amount or recollection.

Q. 15. Have you in your hand a statement of the account of the estate of Henry Hudson to Frank E. Guernsey, debtor?

A. A memorandum account.

Q. 16. And in that account will you please read the charge under date of November 5, 1904?

A. "To appearance in District Court in behalf of trustees to oppose petition of Hudson Clothing Company, $5.00."

Q. 17. Will you please read the charge under date of November 8, 1904?

A. "To same matter, $5.00."

Q. 18. Whether or not between the dates of November 5 and 8 appears a charge that is not dated?

A. Yes.

Q. 19. Please read the same?

A. "To same matter, $5.00." I think these charges are misleading.

35 Q. 20. What is your explanation if the charges are misleading?

A. It might relate to the matter under item of November 5, but

not relate to actual appearance as the item of November 8 indicates. Probably related to examination of the law.

Q. 21. Then your book charges would indicate two appearances in the District Court, would they not?

A. But one, November 5.

Q. 22. And these other charges in that explanation of yours would relate to the same matter but not to actual appearance in court?

A. Exactly, to my recollection.

Q. 23. I call your attention to charges under June 13, 1905, and ask you to read the same?

A. "To service to Portland in connection with petition in regard to the Hudson Clothing Company to secure assets of the Hudson estate, and preparing for the same, either $15 or $25."

Q. 24. Can you state from your charge whether this is $15 or $25?

A. I cannot state from this memorandum. There is an item following June 13,—"To expenses, $5.00."

Q. 25. Whether or not from August 23, 1904, to and including December 2, 1905, you were attorney for the trustees of the estate of Henry Hudson, and as such your books of account say charges for services performed and expenses incurred?

A. Yes.

Cross-examination by JOHN W. MANSON:

X Q. 26. In the hearings before the District Court on the matter of the petition of certain creditors, of which were James and Henry Hudson as copartners under the firm name of the Hudson Clothing Company, did you appear for Henry Hudson at all?

A. Yes.

X Q. 27. At his request?

A. Yes.

X. Q. 28. And did you understand that, after the court had set the case down for hearing on the adjudication of petition of James and Henry Hudson, bankrupts, the standing you had in court was as attorney for Henry or James Hudson, or both?

A. I should answer by explanation. I understand that when I first appeared on November 5, 1904, as attorney for the trustees of Henry Hudson's estate, I appeared in behalf of pleadings filed by the trustees of that estate, which the court was not inclined to consider, but finally said that all the matters would stand for
36 consideration. Until the matter was finally taken up, as it was on June 13, 1905, and then at the special request of Henry Hudson, I appeared in his behalf in pleadings filed by him in opposition to the petition pending, and, as I understand, the hearing was held by the court on the issue raised by the objection and pleadings of Henry and James Hudson, and any charges made by me against the estate of Henry Hudson were charges for my time and trouble appearing at that hearing to watch what the court would do that would affect the interest of the estate of Henry Hudson. I

appeared for Henry Hudson on his pleadings, and that was on what the hearing was held.

[Trustee objects. Admitted.]

X Q. 29. Whether, at any time, when these matters were brought up, any suggestion was made by you or someone else in your behalf, that the answers of the trustees should be considered, and the court said that it would be time enough to consider them when issues should arise in which they were concerned?

A. At the hearing held on or about November 5, the court remarked that it would be time enough for the trustees to appear in opposition to the petition when they had been heard.

[Trustee objects. Admitted.]

(By JOHN S. WILLIAMS:)

X Q. 30. The answers of the trustees were allowed to stand at that time by Judge Hale, were they not?

A. As I recall, the counsel for the petitioners asked that the answers of the trustees of the estate of Henry Hudson be not allowed to stand, and the court said the matter could be considered when it was taken up later.

X Q. 31. And you understood that they were taken up and considered as a part of the hearing of June 13, 1905?

A. As I understand it, a hearing was held June 13, but nothing was taken up or considered relating to the answers.

X Q. 32. What did become of the trustees' answers that had been filed by you as attorney?

A. I cannot state.

X Q. 33. You were employed as an attorney to look after them, were you not, and made charges in your books for that purpose?

A. At the hearing on June 13 they were represented by the counsel of Henry and James Hudson.

X Q. 34. Then they were considered at that hearing, and they had been replaced?

37

A. The court considered only the answers of Henry and James Hudson.

X Q. 35. And did you at that time and that hearing, or at any time later, attempt to have those answers taken up and considered for hearing by the court?

A. Not that I recall.

X Q. 36. Have you any charges on your books against either Henry or James Hudson since November 5, 1904, for services performed and money expended concerning the case in hand?

A. I never made it a practice against any attorney I appeared for.

X Q. 37. James is not a member of the bar?

A. I appeared at the request of Henry. No; James is not a member of the bar.

Examination of JOHN W. MANSON, by Trustee:

Q. 1. Whether or not you are one of the trustees of the estate of Henry Hudson?

A. I am.

Q. 2. Whether or not as such trustee you signed plaintiff's Exhibits 3 and 4?

A. I have no doubt that I did, from the fact that they appear to be copies.

Q. 3. For what purpose?

A. Purpose of trying to get into court as trustee and make a defence to the petition.

Q. 4. Of Robinson-Blake and others against Hudson Clothing Company?

A. Yes.

Q. 5. Whether or not your further purpose was that those answers should be filed in the United States Court in that hearing?

A. I have no doubt that was the intention that they should be filed when they were signed.

Q. 6. Whether or not you know whether those answers were filed in the United States Court?

A. I have no doubt they were.

Q. 7. Did you appear in this case, whether as attorney or otherwise, actively, from the time these answers were filed up to and including June 17, 1905?

A. I think not. I am very certain that I did not appear personally.

Q. 8. Whatever agreement you had in court would be through your attorney?

A. I am satisfied that we had no hearings in court that was entertained.

Q. 9. I ask you whether or not if you had an appearance
38 by reason of these answers, that appearance was by your attorney or yourself?

A. I cannot answer directly, but will indirectly and fully.

Q. 10. Whether or not you were in court in person in this case at any time between November 5, 1904, and June 17, 1905?

A. It is my recollection that I was not.

Q. 11. Whether or not you were in court in person after June 17, 1905?

A. I was.

Q. 12. In what capacity?

A. As attorney for Henry Hudson and James Hudson.

Q. 13. Whether or not you were present August 8, 1905, at the hearing on a petition for rehearing?

A. I am very certain that I was.

Q. 14. And took part in the proceedings of that day?

A. I think so. My only question is as to the date, and I think July 8 is the correct date.

Q. 15. For whom were you attorney, or for whom did you appear at the hearing on the petition for rehearing?

A. James and Henry Hudson, one or both.

Q. 16. Have you charges for those services, with expenses paid out, on your books of account?

A. I am very certain that I have.

Q. 17. To whom are the charges for services and the expenses paid out charged?

A. Charles F. Cross & Company.

Q. 18. Anyone else?

A. No.

Q. 19. And against whom are subsequent charges made for your services and expenses paid out in this matter?

A. Charles F. Cross & Company.

Q. 20. Charles F. Cross & Company were petitioning creditors against Henry Hudson's involuntary bankruptcy were they not?

A. I understand Henry Hudson is in bankruptcy under voluntary proceedings.

Q. 21. Whether or not Charles F. Cross & Company with two other creditors of Henry Hudson filed an involuntary petition in bankruptcy against Henry Hudson in the year 1904?

A. I think they did.

Q. 22. And whether or not Henry Hudson agreed that
39 upon that petition being withdrawn or not being pressed he would file a petition in bankruptcy?

A. I think that is substantially correct.

Q. 23. Whether or not Charles F. Cross & Company were one of the heaviest creditors?

A. They were.

Q. 24. And proved their debts as such?

A. They did.

Q. 25. And you say they among others helped elect you as one of the trustees of the estate of Henry Hudson?

A. I do.

Q. 26. And you also say they among others elected the other trustees of the estate of Henry Hudson, who would pay freely to the interests of Charles F. Cross & Company?

A. I should not want to put it that way. I say they helped elect the other two trustees who would properly administer the estate of Henry Hudson, bankrupt.

Q. 27. In the interest of the creditors?

A. Yes.

Q. 28. Of whom Charles F. Cross & Company was one?

A. Yes.

Q. 29. As one of the trustees of Henry Hudson's estate, whether or not you took and claimed as a part of that estate the entire stock of goods in the store of the Hudson Clothing Company?

A. I should say yes.

Q. 30. And that stock of goods was appraised and inventoried as a part of the estate of Henry Hudson?

A. Yes.

Q. 31. The trustees of Henry Hudson's estate sold their stock of goods, did they not?

A. They did.

Q. 32. And received money therefor?
A. Yes.
Q. 33. How much?
A. $3500.
Q. 34. Whether or not you sold it to James Hudson Company?
A. Yes. It was sold to the corporation known as the James Hudson Company.
Q. 35. Whether or not demand has been made upon the trustees of the estate of Henry Hudson by myself as trustee of the Hudson Clothing Company for the same?
A. I do not remember of any.
Q. 36. Do you know of no demand that I have made upon you or your associate trustees for this stock of goods or the proceeds thereon?
A. I do not remember of any now.
Q. 37. I will make a demand now. Will you deliver to me the stock of goods or the proceeds that you have received from the sale of the goods of the Hudson Clothing Company?
A. No.
Q. 38. Since the bankruptcy of Henry Hudson, has Henry
40 Hudson made any claim on this stock of goods as being his property, and remained his since his bankruptcy proceedings, so that he would have an interest at the present time therein?
A. No; he claims that the stock of goods was his before his bankruptcy proceedings and that afterwards it passed to his trustees.
Q. 39. So that at the hearing before the United States Court on August 8, 1904, hearing on petition for rehearing, you appeared for Henry Hudson and James Hudson; did I understand that correct?
A. One or both.
Q. 40. And charged your bill to Charles F. Cross & Company?
A. I did, if I charged it to anyone.
Q. 41. Although you now say that Henry Hudson did not make any claim to have a personal interest in the subject-matter save what might have passed to his trustees?
A. Yes.
Q. 42. And, so far as you know, James Hudson made no claim to own the stock of goods either before or after the bankruptcy proceedings or at any time?
A. No.
Q. 43. Have you your books of account here?
A. I have not.
Q. 44. Where are they?
A. At home, Pittsfield.
Q. 45. Will you examine your books of account and later give the referee, to be inserted in the stenographer's notes, the name of the party or parties to whom you have charged your services and expenses paid out?
A. I will now state positively that if there are any charges on my books for those services, and I presume there are, they are charged to Charles F. Cross & Company, and I will, if you request, re-examine my books and give you any further information you may desire, but

my recollection is as near positive as it should be on any other subject.

Q. 46. Whether or not Charles F. Cross & Company ever gave you authority to appear in the hearing as attorney for James and Henry Hudson in these proceedings and charge your services therefor and expenses to them?

A. Yes, in a general way. They never gave me any specific instructions in regard to this hearing, but they employed me generally on all matters connected with failure in bankruptcy estates. In this bankrupt estate of Henry Hudson and others connected therewith my authority is very general.

Q. 47. Then you will take the position, will you not, that your services so rendered were advantageous to Charles F. Cross & Company?

41

A. I presume them to be so or I should not have appeared for Henry Hudson and charged it to them.

Q. 48. Henry Hudson and James Hudson were both in voluntary bankruptcy at that time?

A. They were.

Q. 49. And they had no personal interest in this hearing or the outcome, so far as you know?

A. I do not see as it made any difference to them, either of them. They thought so and Henry wished me to have a talk with James.

Q. 50. What basis did Henry give you that he being in bankruptcy could have any interest in these proceedings which involved property that had passed to his trustees, of whom you were one, prior to these proceedings?

A. The basis was that he was owing a large number of creditors a large amount of money and he greatly wished his assets should go to the rightful creditors; they being his creditors, he wished that they should receive the benefit of his assets.

Q. 51. You had nothing, so far as any personal interests of Henry Hudson were concerned, in this matter for which you would charge legal services in these hearings?

A. I did not consider that Henry should pay for my appearance there, although he requested me to appear for him.

Q. 52. You considered then that the parties who were to derive benefit from the result of those hearings should pay for them, did you not, and nence your charges were accordingly?

A. Yes. I had no authority to charge to all creditors, but the creditors I represented I felt should pay me for services there.

Q. 53. So that you were really working for the interests of Henry Hudson's estate, were you not?

A. Only if the result should be as I desired it to be, it would benefit Henry Hudson's estate.

Q. 54. And that was the object that you had in view?

A. The object of gratifying Henry Hudson, and complying with his request to get the correct distribution of his assets.

Q. 55. Do you think your clients, Charles F. Cross & Company, would pay you for services or money expended simply to gratify a party with whom they had no connections financially?

A. No.

Q. 56. After the date of Henry Hudson's petition in bankruptcy, voluntary, July 14, 1904, filed, dated July 13, 1904, and ad-
42 judicated August 8, 1904, did Charles F. Cross have any financial interest in Henry Hudson as an individual.

A. They did, if he should fail to get discharge in bankruptcy; they still have their claim to sue against him, and whatever assets he accumulates will be a fund to which they can resort to satisfy their claim.

Q. 57. Did you have any doubt on the eighth day of August, 1904, that Henry Hudson would receive discharge in bankruptcy?

A. I could not say. I have forgotten the conditions of the examination.

Q. 58. Did you purpose to file any objections to his discharge at that time?

A. If my clients, either through themselves or through me, find any reasonable grounds upon which to object to Henry's discharge they would have desired and expected me to propose it.

Q. 59. Did you at that time find any reasonable ground upon which you were to file any objections?

A. I think not.

Q. 60. Did you have any suspicion?

A. I always had a suspicion.

Q. 61. Did you follow that suspicion?

A. I followed it diligently.

Q. 62. And did you find anything upon which you could file any objections to his discharge?

A. I did not.

Q. 63. So that, going back to the main question in hand, on the eighth day of August, 1905, so far as you then knew, as one of the trustees of the estate of Henry Hudson, Charles F. Cross & Company, to whom your charges of that date were made, had no financial interest in the then present condition of Henry Hudson's affairs?

A. They did have a contingent interest therein, and do at the present time, if I understand the law correctly.

Q. 64. Whether or not all of your charges in the matter now in hearing since August 8, 1905, have been made uniformly to the Charles F. Cross & Company?

A. They have.

Q. 65. And have your charges for those services been made to anyone else since that date?

A. No.

The witness testified by permission of the referee as follows:—

In regard to my charges on my books for any of the matters connected with what I call the bankruptcy estate of Henry Hudson and kindred estates, I have, from the time shortly after the beginning of
43 proceedings, made my charges to Charles F. Cross & Company. In this case there were a number of creditors that I represented who should pay the entire amount, as I think that creditors should each bear a proportional part of the expenses, and certain of the charges should be paid out of the estate of Henry Hudson, certain of the charges should be paid by the estates of other

bankrupts in bankruptcy, but, as a matter of convenience, I have grouped them all under one heading in my books.

[Trustee objects to answer as irrelevant and immaterial.]

In regard to the appearances for him by me as an attorney, or authorized by me as one of the trustees of the estate of Henry Hudson, in the involuntary petition of certain creditors against the Hudson Clothing Company as forming a partnership made up of Henry Hudson and James Hudson, I took an interest in preserving and holding the assets of the store that was once run under the name of the Hudson Clothing Company as the property of the Henry Hudson estate, and, while the petition was filed against James and Henry Hudson, I undertook to have the appearance entered for the trustees of the Henry Hudson estate, and I have, no doubt, made and signed the answers that have been put into the case. But, upon being informed that the court held that the trustees of Henry Hudson had no standing in court, and no right to be heard, and after the case was set down for hearing on the petition in answer to James and Henry Hudson alone, and the answers of the trustees ignored, I made no further effort to get into court or have any hearing upon the answers of the trustees or in their behalf, considering it useless to do so after the finding of the court, and so instructed the party, Mr. Guernsey, who undertook to appear as attorney for the trustees, and entered his appearance for Henry Hudson at the request of Henry Hudson. I afterwards, at the special request of Henry Hudson, did personally appear and took part in the hearing upon a petition for review and drew it, especially stating at that time that I appeared not for the trustees, but for Henry Hudson. I did not consider it inconsistent to the interest of my clients to do so, but did consider it to be for their interest.

[Trustee objects as tending to repudiate the authority of the attorney after the transaction.]

The said James Hudson, bankrupt, and the said Frank E.
44 Guernsey and John W. Manson, witnesses, were each duly sworn before the foregoing examinations were taken.

[Adjourned this hearing to the court house, in said Dover, June 15, 1906, at ten o'clock a. m.]

[Met at time and place fixed by said adjournment.]

On this fifteenth day of June, 1906, John S. Williams, trustee of the Hudson Clothing Company, continues his examination for the petitioners as follows:—

CALVIN W. BROWN called. Sworn by John W. Manson, Justice of the Peace.

Q. 1. What is your name?
A. Calvin W. Brown.
Q. 2. Residence?
A. Dover.

Q. 3. Your occupation or profession?
A. Attorney at law.
Q. 4. Whether or not you hold an official office in this county?
A. Judge of Probate.
Q. 5. Whether or not before June, 1904, and after May 1, 1902, you held in your hands certain demands for collection against the Hudson Clothing Company?
A. I did.
Q. 6. And whether or not you endeavored to get collection of the same?
A. I did.
Q. 7. Whether or not you have had some correspondence with Henry Hudson, Esq., in regard to those claims some time before July 1, 1904?
A. I did.
Q. 8. Whether or not this conversation was before Henry Hudson, Esq., filed his petition in bankruptcy?
A. It was.
Q. 9. And as near as you can fix the date, was it in May or June, 1904?
A. I could not fix the exact time. Some time in the spring 1904.
Q. 10. Will you please state what that conversation was?

[Objected to by J. W. Manson.]

Q. 11. Whether or not you had personal conversation with Henry Hudson in regard to these claims?
A. I did; yes, sir.
Q. 12. And he knew that you had these claims in your hands?
A. He did.
Q. 13. And you endeavored to get a settlement of the
45 claims against the Hudson Clothing Company through James Hudson and Henry Hudson, did you?

[Objected to by J. W. Manson; any statement in regard to correspondence objected to as not being best evidence.]

Q. 14. Whether or not you had interviews with the Hudson Clothing Company?
A. The only personal interview I had was with Henry Hudson; the letters I received were from James Hudson. I addressed all my letters to the Hudson Clothing Company.
Q. 15. Now you may state what the conversation was which you had with Henry Hudson, Esq., previously referred to?
A. I recollect talking with Henry Hudson one day, I think it was in front of the Blethen House there, and I remember of his saying at that time that the assets of the Hudson Clothing Company were sufficient to pay the debts of the Hudson Clothing Company, and ought to go that way. I don't think at that time that any petition had been filed by Henry Hudson himself or against him in bankruptcy. I would not be positive about that, but it was at the time and known at the time that Henry Hudson was financially embarrassed.

Q. 16. And whether or not at that time had James Hudson filed his petition in bankruptcy, do you know?

A. I do not know. My impression is that he had not.

Q. 17. And whether or not you had information that James Hudson was involved financially at the time of this conversation?

A. I understood. Knew that he was.

WILLIAM A. BURGESS called. Sworn by J. W. Manson, Justice of the Peace.

Q. 1. What is your name?

A. William A. Burgess.

Q. 2. Residence?

A. Sangerville.

Q. 3. Your profession?

A. Lawyer.

Q. 4. Whether or not between the dates of May 16, 1902, and July 1, 1904, you had demands in your hands for collection against the Hudson Clothing Company, of Guilford?

A. I did.

Q. 5. Whether or not you endeavored to get settlement of such claims?

A. I did.

Q. 6. Whether or not Brother Hudson saw you as the
46 consequence of your demanding payment of these debts?

A. I called upon Brother Hudson, saw him in regard to the demands against the Hudson Clothing Company, which I held for collection.

Q. 7. You had at that time understood that Brother Hudson was known to be included in the Hudson Clothing Company?

[Objected to.]

Q. 8. When was it you had this interview with Brother Hudson?

[Objected to by J. W. Manson. Any conversation that you and Brother Hudson had will be objected to.]

A. I went to Brother Hudson's to find out how I should proceed to get one bill that I had, and he told me, part of it, if I remember correctly, he paid; and another bill of items was paid by James Hudson himself. A short time after that I had another matter in my hands and went to see Brother Hudson about it and find out the standing of the Hudson Clothing Company; as I recollect it, he told me that the Hudson Clothing Company had started in to organize into a corporation, but that the organization had never been completed. The papers had all been made out, but that the matter was dragging along.

Q. 9. And all these demands were against the Hudson Clothing Company?

A. They were.

Q. 10. How far do you live from Guilford Village?

A. One mile.

Q. 11. Are you in Guilford Village very often?

A. At times almost daily.

Q. 12. Whether or not you saw a sign upon the store of the Hudson Clothing Company, and what that sign was?

A. I have seen a sign on the store of the Hudson Clothing Company; do not remember the whole that was on the sign, but do remember of seeing part of it—Henry Hudson, President, James Hudson, Business Manager. Best of my recollection.

Q. 13. Whether or not you have seen letterheads with similar inscriptions at the top?

A. I have.

Q. 14. And have received such yourself in corresponding with the Hudson Clothing Company?

A. I would not say that. No, sir; think not.

47 Q. 15. You have seen letters that your clients held with that inscription?

A. Yes, sir.

Q. 16. And, so far as you know, were on business with the Hudson Clothing Company?

A. They were.

At the request of James S. Williams, Esq.:—

It is admitted that Exhibits Nos. 8 and 9 were written to James E. Hewey, Clerk of the United States District Court, of Portland, by Manson & Coolidge, of which firm John W. Manson is senior partner, and the same are hereby annexed and form a part of said examination.

It is admitted that Exhibit No. 10 is a copy of the Articles of Association to form a corporation by Henry Hudson, James Hudson and Martha Martin, to be known as the Hudson Clothing Company.

John A. Rand, having been requested to attend as a witness, and failing to appear, it is hereby agreed that if he were present he would testify as follows: Previous to May 6, 1902, he was in possession of certain clothing, boots, shoes and gents' furnishings, in the town of Guilford, which stock of goods is a part of the same stock of goods which is here in controversy, and which is the same stock of goods which James Hudson testified in his examination that he assumed possession, and which stock of goods was purchased, as the examination of James Hudson shows, which was advertised as the stock of goods of the Hudson Clothing Company, immediately previous to May 6, 1902.

Said Rand understood that Henry Hudson, of Guilford, claimed to own said stock of goods, and in conversation with said Henry Hudson in regard to same said Henry Hudson told said Rand that he, the said Henry Hudson, had sold said stock of goods to his brother, James Hudson.

HENRY O. STAPLES called. Sworn by J. W. Manson, Esq., Justice of the Peace.

Q. 1. Your name?
A. Henry O. Staples.
Q. 2. Residence?
A. Bangor.
Q. 3. What is your occupation?
A. Commercial traveler.
48 Q. 4. What firm do you represent?
A. A. B. Kirschbaum Company.
Q. 5. Whether or not your firm had a debt against the Hudson Clothing Company in the year 1902?
A. Yes, sir; I think it was that year.
Q. 6. And were owing your firm in June, 1904?
A. Am not sure, but think so.
Q. 7. Whether or not you had some conversation in regard to the Hudson Clothing Company?
A. I did.
Q. 8. Whether or not you sold the goods, those goods that they now owe your firm for?
A. I sold them personally.
Q. 9. To whom did you sell them?
A. James Hudson.
Q. 10. And did you send the goods to the Hudson Clothing Company?
A. I did.
Q. 11. And you entered them that way?
A. Yes, sir.
Q. 12. And was marked?
A. Yes, sir.
Q. 13. What was your conversation in regard to the goods, with James Hudson?
A. I asked in regard to their standing; told me that they were a corporation, paid in, am not sure, but think somewhere around $4000, and I should say he was treasurer, and Henry president, or *vice versa.*
Q. 14. And capital stock $10,000?
A. Am not sure, might be.
Q. 15. Was there any further statement that you remember in regard to the matter?
A. I don't remember anything special. I asked them in regard to the standing and that was his answer.
Q. 16. And that was before the failure?
A. When the first order was taken.
Q. 17. And you say that the goods were sold to the Hudson Clothing Company?
A. Yes, sir.
Q. 18. Shipped?
A. Yes, sir.
Q. 19. And the Hudson Clothing Company are owing your firm for this sale?

A. They do.

Q. 20. Whether or not you afterwards had any conversation in regard to this claim with Henry Hudson?

A. I have.

Q. 21. When was that?

A. I met Henry Hudson at Newport after his failure, and I told him that I understood that it was a corporation, and he said it was not, and that they had had the papers made out some time,
49 but had not had them completed, and consequently was not a corporation. He said that he was very sorry for the benefit of the creditors.

Q. 22. Anything else that you wish to put in?

A. Do not know of anything.

[Adjourned this hearing to the court house, in said Dover, June 30, 1906, at ten o'clock, a. m.]

JUNE 30.

[Met at time and place fixed by said adjournment.]

It is admitted that in the report of the appraisers in the estate of Henry Hudson, bankrupt in bankruptcy, the following words appear, "Stock in Store of Hudson Clothing Company," followed by a list of goods,—clothing, hats, caps, boots, shoes, rubbers and like merchandise, to the amount of $3471.63, which were, at the time of the appraisal, August 29, 1904, in the store of the Hudson Clothing Company.

Petitioner offers opinion of Judge Hale of the United States District Court of Maine, *In re* Hudson Clothing Company, in Volume 140, page 49, Federal Reports. Admitted, subject to objections by respondents as being irrelevant to the subject-matter of this hearing.

Petitioner offers Exhibit 13, being the check book of James Hudson, and Exhibit 14, being the deposit book, used first by James Hudson and lastly by the Hudson Clothing Company, and Exhibit 15, which is the check book of the Hudson Clothing Company, which three exhibits are the same that James Hudson identified in his examination. The petitioner is to be allowed to use the whole or a part of said exhibits.

Admitted that in the schedule of assets in the estate of Henry Hudson, bankrupt in bankruptcy, whose petition was filed July 13, A. D. 1904, the following words appear in Schedule B 2, under Division "C" of personal property, as follows, to wit,—"Stock in Trade in Business of Hudson Clothing Company, at Guilford, Maine, of the value of $3500."

Petitioner offers Exhibit 16, being the docket entries *In re*
50 Hudson Clothing Company, bankrupts in bankruptcy, in the United States District Court for the District of Maine.

Petitioner offers Exhibit 16, being petition of creditors against Henry Hudson and James Hudson, alleged copartners under the name of the Hudson Clothing Company in involuntary bankruptcy, together with Exhibit 17, adjudication of the court thereon.

Petitioner offers Exhibit 18, being a letter written by James

Hudson, Mgr., under date thereof, to the Shoe & Leather Mercantile Agency, Boston, Massachusetts, the original being filed with the United States District Court *In re* Hudson Clothing Company.

Petitioner offers Exhibit 19, being advertisement contained in the Guilford *Recorder*, on merchandise, in Guilford, in said district, under date of May 22, 1902.

Also Exhibit 20, being advertisement in the same paper under date of July 17, 1902.

Also Exhibit 21, being advertisement in the same paper under date of January 1, 1903.

Also Exhibit 22, being advertisement in the same paper under date of May 26, 1904.

Also Exhibit 23, being advertisement in the same paper under date of June 16, 1904.

In the schedules filed July first, A. D. 1904, by James Hudson, voluntary bankrupt in bankruptcy, in Schedule A 3, No. 3, under the list of creditors, appear the following words: "Creditors of James Hudson, under name of Hudson Clothing Company," and appears a list of creditors, with their residences and the amounts due each. It is admitted that those amounts were substantially correct and due to the parties named and unpaid at the present time; that these amounts are respectively for merchandise bought by James Hudson, in and under the name of Hudson Clothing Company, from the several creditors; that the goods so bought were shipped and marked to the Hudson Clothing Company, Guilford, Maine, were put into the store of the Hudson Clothing Company with other goods therein, and were in said store on the date of July 1, 1904, excepting what had been sold by James Hudson under and in the name of the Hudson Clothing Company in the usual course of trade, and were in
51 said store at the date of the appraisal in these proceedings referred to, August 29, A. D. 1904; and that other goods in said store made the items comprising the appraisal hereinto referred in the bankruptcy of Henry Hudson, and in said appraisal headed "Stock in Store of Hudson Clothing Company."

It is admitted that John S. Williams, of Guilford, Maine, is duly appointed and qualified trustee in bankruptcy of the Hudson Clothing Company.

Petitioner offers Exhibit 24, being so much of the referee's record as show the appointment of John S. Williams, trustee herein.

CALVIN W. BROWN (Recalled by Petitioner).

Examination by Mr. WILLIAMS:

Q. 1. Whether or not you were present in Portland, June 13, 1905, at the hearing *In re* Hudson Clothing Company, before Judge Hale, of the United States District Court?

A. I could not say as to the exact date, but I attended a meeting before him about that time, in that case.

Q. 2. Whether or not that hearing was upon a bill by certain creditors who petitioned against Henry Hudson and James Hudson,

alleged copartners under the name of Hudson Clothing Company in involuntary bankruptcy?

[Objected to because the records of the court are the best evidence. Admitted.]

A. It was.

Q. 3. Whether or not you were present as a witness in a hearing by Robinson-Blake Company, J. M. Arnold Shoe Company, Crosby & Dwinell, petitioners against Henry Hudson and James Hudson, alleged copartners under the name of Hudson Clothing Company, on or about June 13, 1905, before Judge Hale?

A. I do not think I ever knew all the petitioners. I knew some of them that you have said.

Q. 4. You were present as a witness?

A. I was.

Q. 5. Have you read the testimony of James Hudson, William A. Burgess, C. W. Brown and H. O. Staples, in the hearing now before the court?

A. I have.

52 Q. 6. Whether or not these parties were witnesses before the District Court, Judge Hale, on the thirteenth day of June, 1905, in the case referred to.

[Respondents object as irrelevant. Admitted.]

A. They were, if that was the nature of the hearing.

Q. 7. Whether or not the testimony as there given by them and the testimony as given in the proceedings pending before this court is substantially the same.

[Respondents object as irrelevant, immaterial and self-serving. Admitted.]

A. Yes, to the best of my recollection.

Cross-examination by Mr. MANSON:

X Q. 8. Did you read any of the petitioning creditors in the estate of Hudson Clothing Company?

A. No, I did not.

It is admitted that petitioner's Exhibits 10 and 11 are copies of exhibits introduced in the hearing before Judge Hale, in the District Court, June 13, 1905, *In re* Hudson Clothing Company. Subject to objections by respondents.

It is admitted that John S. Williams, trustee *In re* Hudson Clothing Company, made written demand upon the respondents to the petition herein for the assets of the Hudson Clothing Company prior to January 31, 1906.

All exhibits offered were admitted.

Petitioner rests, except the right of petitioner to offer certain portions of the schedule of assets of James Hudson, bankrupt in voluntary bankruptcy.

J. W. Manson opens for Respondents.

Mr. Manson offers, for respondents, certain letters which are admitted to be from the parties whose names are subscribed to them.

Respondents' Exhibit 1. Letter of August 17, 1902, from William N. Prince to Henry Hudson.

Respondents' Exhibit 2. Letter from same to same, dated September 2, 1902.

Respondents' Exhibit 3. Letter from same to Hudson Clothing Company, dated March 27, 1903.

53 Respondents' Exhibit 4. Letter from same to Hudson Clothing Company, dated April 9, 1903.

Respondents' Exhibit 5. Letter from same to Henry Hudson, dated April 14, 1903.

Respondents' Exhibit 6. Letter from same to Hudson Clothing Company, dated April 21, 1903.

Respondents' Exhibit 7. Letter from same to Henry Hudson, dated April 5, 1903.

Respondents' Exhibit 8. Letter from A. B. Kirschbaum & Company, dated September 5, 1903.

Respondents' Exhibit 9. Letter from same to same, dated January 21, 1904.

Respondents' Exhibit 10. A copy of a guarantee referred to in some of the letters from A. B. Kirschbaum to Henry Hudson.

Respondents' Exhibit 11. Letter from same to same, dated February 8, 1904.

Respondents' Exhibit 12. Same to same, dated March 3, 1904.

Respondents' Exhibit 13. Same to same, dated March 29, 1904.

Respondents' Exhibit 14. Same to same, dated April 4, 1904.

Respondents' Exhibit 15. Letter from J. M. Arnold Shoe Company to Henry Hudson, dated April 4, 1904.

Respondents' Exhibit 16. Letter from J. M. Arnold Shoe Company to Henry Hudson, dated April 9, 1904.

Respondents' Exhibit 17. Letter from same to same, April 6, 1904.

Respondents' Exhibit 18. Same to same, dated April 30, 1906.

Respondents' Exhibit 19. Same to same, dated May 3, 1904.

Respondents' Exhibit 20. Same to same, March 21, 1904.

Respondents' Exhibit 21. Letter from Tremont Rubber Company to Henry Hudson, dated May 7, 1904.

Respondents' Exhibit 22. Letter from Joseph Bannigan Rubber Company, dated March 16, 1904.

Respondents' Exhibit 23. Same to same, dated June 29, 1904.

Respondents' Exhibit 24. Letter from Byron Greenough & Company to Henry Hudson, dated October 21, 1903.

Respondents' Exhibit 25. Letter from Robinson-Blake Company to Henry Hudson, dated March 25, 1903.

54 Respondents' Exhibit 26. Letter from same to same, dated April 4, 1903.

Respondents' Exhibit 27. Letter from same to same, dated May 15, 1903.

Petitioner objects to Exhibits 7 and 3, because they purport to be

in answer to letters which are not here produced, written by parties unknown to the petitioner.

Also objects to Exhibits 1 to 7, inclusive, as being irrelevant and immaterial.

Also objects to Exhibits 12, 13, 14, as the same purport to be in answer to certain letters not produced by the respondents.

Also objects to Exhibits 8 to 14, inclusive, as being immaterial and irrelevant.

Also objects to Exhibits 15 to 20, inclusive, for same reason.

Also objects to Exhibits 21 to 26, inclusive, for same reason.

HENRY HUDSON (called by Respondents).

Examination by J. W. MANSON, for Respondents:

Q. 1. Your name?

A. Henry Hudson.

Q. 2. Residence?

—. Guilford, Maine.

Q. 3. Have you been, since the first day of January, 1902, a copartner with James Hudson?

[Objected to as being a matter that has been previously adjudicated upon by the court. Admitted, subject to objections.]

A. No, sir.

Q. 4. I will ask you what the Hudson Clothing Company was, and what your connection has been with it from the time that name was used in the business in Guilford until the present time, beginning with the J. A. Rand stock of goods?

[Objected to for same reason as previous question. Admitted, subject to objection as above stated.]

A. For some time prior to April, 1902, I have been equitable mortgagee, or in fact owning the stock of goods in the store conducted by J. A. Rand, in Guilford Village, Maine. Mr. George F. Newbegin, who then lived in Guilford, had an equitable interest in the goods. In the latter part of April, 1902, I deemed it
55 for my interest to take said goods. I communicated with Mr. George F. Newbegin, and Mr. Newbegin and J. A. Rand took the account of stock as a basis of settlement between Rand and Newbegin. After this account of stock was taken, Mr. Newbegin turned over to me the stock of goods as my own. I had these goods and desired to sell the goods. Immediately after this transaction was closed with Mr. Newbegin, I had two telegrams to go to Bangor, where my brother, James Hudson, was conducting a grocery business. After I got to Bangor, I deemed it for his interest that he should close out his grocery business at Bangor, and for him I did close out the business. I told him that I had a stock of goods at Guilford and that he could go to Guilford and go into business there in the same store where the business had been carried on by J. A. Rand, and with this stock of goods he came to Guilford and went into the store. He had the original account of stock which had been taken of the goods and examined it. I said to him that I would

form a corporation; that it would take three of us; that myself and he with a third party would make up the corporation, and that he could have all of the goods, and that it should be his business, but the stock, when issued, I should hold, and as he could pay me, he was to pay me for the stock of the corporation, and it was to be turned over to me after the corporation was formed; I would transfer to the corporation the goods so that the corporation could hold the goods. It was talked between he and myself that my aunt, Martha Martin, should be the third party to make up the corporation; that he could hold some of the stock and Mrs. Martin should have enough so as to make her eligible as a party to the corporation. I think it was about the sixth of June that he went into the store to do business. Some time in the month of June I did draw up an agreement under the statute to form a corporation, and also wrote a certificate as required by law. Nothing further was done with these two documents by me. They remained in my office. I never showed them to my brother, James Hudson, or to Mrs. Martha Martin. I did not complete the organization at that time on account of the condition of my brother. I thought from week to week that circumstances might change, and then I would complete the organization. So that this was allowed to go from time to time until August, 1903, when my brother was away from the store for
56 about six weeks, and returned the latter part of September or first of October, and after that pressing business matters of my own caused me to neglect to do anything further in regard to completing the organization of the corporation. My brother never saw the documents that I had drawn up. I never transferred to anyone the title of these goods which I had from Mr. Newbegin. My brother was in the store and conducted the business entirely. He did not consult with me at all in regard to the management of the business. Whatever goods I took from the store I purchased and bought, principally at prices at the time which he gave me, and practically paid for everything that I took from the store, and so far as I can recollect I never had any goods charged that I took from the store. I made purchases there the same as I purchased goods at other stores. I never had anything from the store but what was paid for.

There never was any talk between us about forming a partnership, or that I should ever receive any profit from the business. I was to hold the stock of the corporation, when formed, only as security, and to be turned over to him as his property as he paid for it. I did what I did for the express purpose of having him go into business at Guilford to carry the business on as practically for himself. The idea of a corporation was that he could hold it and manage it best as his own, and I still be in a measure protected by holding the stock. I cannot state the time when I first knew of the name of the Hudson Clothing Company. It must have been some time in the summer. I was not consulted in so far as the name was concerned. My first knowledge in regard to the name was obtained not from my brother, but, I think, from seeing the advertisement which he put into the newspaper, or on the boards he put out upon

the highway or upon the corner of the store. We never had any talk whatever in regard to the use of the name, or in regard to the conducting on of the business. I advanced or let him have money from time to time to pay, as he said, bills that he had contracted. I also paid notes that he had given, these notes having been brought to me and indorsed by me for him. The amount which I paid on account of debts which he had contracted after he went into the store aggregated about $5000. These sums of money which
57 I let him have I charged upon my books under the name of Hudson Clothing Company, except in some few instances. These instances I am not now able to state the dates or exact amounts. Not having seen my books for some time to make examination, I used the name of the Hudson Clothing Company simply as an identification to keep the account by itself. I did indorse for him, from time to time, notes given to persons, firms or corporations from whom he had purchased goods. I recall that I indorsed notes given to Robinson-Blake Company, J. M. Arnold Shoe Company, Tremont Rubber Company, Rice, Sawood & Whiton, A. B. Kirschbaum, Byron Greenough & Company, and some others whose names I cannot recall. I also received letters from different firms asking me to give written guarantees. Among those from whom I received letters and gave written guarantees were Robinson-Blake Company, J. M. Arnold Shoe Company, A. B. Kirschbaum & Company, Joseph Bannigan Rubber Company, Byron Greenough & Company, and it may be some others. This money was advanced by me to take care of these bills, and I advanced it to my brother James on his account to keep the business going for him.

Q. 5. It has been in testimony here that there were certain Rand bills. What did I understand was the terms of the transfer of the stock to you, as far as guaranteeing bills outstanding?

[Objected to and excluded.]

Q. 6. In acquiring a title to this stock of goods, known as the Rand stock, did you guarantee a portion of certain bills?

A. Yes, I did.

Q. 7. What class of bills?

A. Bills which had been contracted by J. A. Rand, in conducting this business up to the time that the goods were sold and transferred to me. I gave J. A. Rand an agreement agreeing to pay merchandise bills in the sum aggregating about $4800.

[Objected to as immaterial. Admitted.]

Q. 8. When James Hudson came from Bangor to Guilford, it was near April or May, 1902?

A. The early part of May, 1902.

Q. 9. Now, did he bring with him certain money?

A. He either brought with him or I brought from Bangor for him a check which was given in payment of the goods at Bangor, payable to his order.

58 Q. 10. And was it purposed or agreed by you and he at that time that that check should be used as part payment for

the Rand stock, into which he at that time entered into an agreement to pay to you?

[Objected to and excluded.]

Q. 11. Was there any talk or agreement between you and James Hudson as to what would be the ultimate disposition of that check?

A. There was.

Q. 12. What was it?

A. He was owing debts which he had contracted at Bangor in his grocery business, and the money that he received would have to be applied to the payment of these debts, and that there was not enough to take care of his indebtedness in the grocery business at Bangor, and did not have any money to put in towards the payment of this stock of goods.

Q. 13. Whether or not the full amount of this money or check that you brought for him from Bangor was ultimately used by him to pay bills outstanding against him when he left Bangor?

A. It was, as I understood at that time.

Q. 14. Whether or not between the date of his coming from Bangor to Guilford, and the date when that money was used to pay these outstanding bills, any portion of it was used by you temporarily?

A. There was. Among the bills that I had guaranteed to Rand to pay was a bill for clothing due David Brothers, New York. Very soon after my brother went into the store, C. W. Brown, an attorney at law, came to Guilford and saw Rand, against whom the bill was. After seeing Mr. Rand, C. W. Brown came to my office and saw me. He had a bill and said it must be paid, and if it was not he would sue Rand, and attach some portion of the stock of goods in the store where he was carrying on the clothing business. I told Brown that I did not have the money, but that if I could get it I would pay him. I knew my brother had this money, and I went to him and asked him to loan me the sum of $300 to pay C. W. Brown on a bill due David Brothers, which I had guaranteed to Rand. He loaned me the sum of $300 and drew a check, and I think it was made payable to C. W. Brown and was delivered to C. W. Brown either by my brother James, at my request, or by myself, and the bill was receipted and settled. I also borrowed from my
59 brother, I think about that time, the sum of $100 besides. My brother, however, was owing to me money which I had let him have at Bangor in his business, the exact amount of which I do not recall, but it was somewhat in excess of $6400. I do not think there was any other sums of money that I ever received from him, except these two sums, after he had gone into the store on the first of May, 1902.

Q. 15. Now, asking you in regard to the business carried on, as you say, by James Hudson, under the name of Hudson Clothing Company, whether there was ever any written agreement, or oral agreement, any understanding or intention that if there were any profits resulting therefrom you should participate in them?

[Objected to as being immaterial, having been previously adjudicated upon by the court. Admitted.]

A. There never was in any way or shape any attention in that way. My whole intention was that he was to manage the whole business. It was to be his own. And I was only to hold the stocks to secure me for the value of the goods, which I will say was somewhere around $6000 or $7000, the exact amount I do not now recall.

Q. 16. Without giving that any extent, and asking the indulgence of the counsel, I put this leading question: Were there times after James had been in the store that his habits were such as to preclude you from going into any close business relations with him, or completing the corporation as you had intended?

A. There were, both in the excessive use of intoxicating liquors and narcotics.

Q. 17. And whether or not the absence of six weeks that you speak about was on account of the attempt of you and others to better these habits?

A. They were. I paid the money out of my own pocket.

Q. 18. And whether the stock of goods which you entered into an arrangement to sell to him was ever transferred by you to any party prior to your voluntary bankruptcy petition?

A. Never.

[Objected to as immaterial, also being deductive to law and also having been previously adjudicated upon in these proceedings. Admitted.]

Q. 19. Whether or not exhibits that I have put into the case, some of them asking for and many of them relating to guarantees, by you made, for debts of the Hudson Clothing Company, were re-
60 ceived by you during the carrying on of the business of the Hudson Clothing Company?

A. They were.

Q. 20. And whether or not in some cases, in response to these, you gave guarantees?

A. I did.

Cross-examination by JOHN S. WILLIAMS:

X Q. 21. Whether or not you wrote a letter to the R. G. Dun Mercantile Agency on or about May 20, 1902, in answer to a letter from that agency regarding the Hudson Clothing Company, and you stated as follows,—"A corporation will be formed under the name as stated," meaning Hudson Clothing Company no doubt, "and I and my brother James shall hold stock in it. He, my brother James, is managing the business. The capital will be $10,000?"

A. I may have. I cannot say but what I did.

X Q. 22. And if you did write such letter, whether or not it was written with the intention that the receiver should understand that such corporation was to be formed very soon after this date?

A. I intended to form a corporation from the time he went into the store. It was my fixed intention at that time to form a corporation, but for reasons already stated by me it was never consummated.

X Q. 23. It was after this date, May 20, 1902, was it not, that

you received requests from these various creditors for a personal guarantee from yourself on the Hudson Clothing Company account?

A. Yes.

X Q. 24. And as a matter of law, if a corporation had been formed previous to the giving of these guarantees by yourself, you would not have been liable in any way for the debts of the Hudson Clothing Company?

A. I should have, but for giving the guarantees.

X Q. 25. I mean this: If the corporation had been formed, you would not have been liable, as an individual, without those personal guarantees?

A. Not simply because I held stock in the corporation, unless I had not paid for my stock, of course.

X Q. 26. Whether or not your trustees, Brother Hudson, have your books of account, and upon each appear the account of the Hudson Clothing Company that you have testified to?

A. They do, if they have all my books, and on the books which they have appear this account.

61 X Q. 27. You are an attorney at law, are you not?

A. I am.

X Q. 28. And have been in actual practice for about 25 years?

A. I have, and more. Nearly 31 years.

X Q. 29. Now, whether or not as a matter of law, under the proceedings that you have stated looking to the formation of a corporation under the name of the Hudson Clothing Company, with no further proceedings therein, should not you have claimed, at any time after these accounts, looking to the incorporation, whether it and letters written by you and your brother James to the Mercantile Agency, that a corporation was being formed, or was to be formed, you could have claimed the Hudson Clothing Company to be a corporation in fact in the eyes of the law?

A. Not as I understand it; no, sir.

X Q. 30. And not have been liable yourself personally for any debts therein contracted?

A. I did not so understand it, although as a witness I do not claim to answer questions of law.

X Q. 31. So that to third parties, if my statement of the law is correct, you would have been under no liability, personally, except in giving personal guarantee as you did to several creditors?

A. I have not so said.

X Q. 32. Have you any knowledge as to whether or not any of the goods represented by the account of David Brothers were in the store at the time when your brother James took charge?

A. I have no knowledge either one way or the other.

X Q. 33. You did not know whether the bill was contracted quite immediately prior to May 20, 1902, or not?

A. I do not now recall; I did know at one time.

X Q. 34. The entire stock of goods that came into your hands from J. A. Rand was turned over to your brother when he assumed, was it not?

A. Just the same as I had received it.

X Q. 35. The date of James Hudson's filing of his petition in in-

voluntary bankruptcy was the first day of July, A. D. 1904, and the date of your own individual petition was July 13, 1904?

A. Yes.

X Q. 36. You were attorney for your brother in his bankruptcy proceedings, were you not?

A. I was.

X Q. 37. And as such attorney his schedules were made in your office, were they not?

A. They were.

62 X Q. 38. And the list of the creditors of James Hudson including those headed "Creditors of James Hudson, under name of Hudson Clothing Company" was in the handwriting of your stenographer, Miss Stockwell, were they not?

A. The particular heading which you have referred to is in the handwriting of my stenographer, Miss Stockwell, but there are portions of the schedule in the handwriting of other parties.

X Q. 39. But they were all made in your office and under your direction?

A. Yes.

JULY 6, 1906.

[Met at time and place fixed by said adjournment.]

Petitioner offers in rebuttal Exhibit 25.

It is admitted that the following parties have proved claims in the estate of Henry Hudson, bankrupt, on guarantees made by him for the Hudson Clothing Company, and upon the claims themselves against said estate of Henry Hudson:—

Taunton Dye Works & Bleachery Company. The guaranty up to the amount of $3000, signed by Henry Hudson and others. Amount of debt proved, $1139.77.

A. B. Kirschbaum & Company. Guaranty up to the amount of $500, signed by Henry Hudson. Proof of debt allowed to amount of $893.91.

The Burton, Pierce Company. Guaranty signed by Henry Hudson without limit. Amount allowed $331.

Allen & Company. Guaranty up to the amount of $600. Amount of debt proved, $500.

Rice, Sayward & Whitten. Guaranty for full amount of goods sold. Amount of debt proved, $578.60.

William N. Prince & Company. Guaranty for all goods sold. Amount of debt proved, $40.66.

Byron Greenough Company. Indorser of notes made by the Hudson Clothing Company. Amount proved, $255.39.

F. O. Bailey Carriage Company. Indorser of note made by the Hudson Clothing Company. Amount of debt proved, $90.63.

McKibbon, Driscoll & Dorsey. Indorser of note made by the Hudson Clothing Company. Amount proved, $44.50.

63 F. H. Brown Clothing Company. Indorser of note made by the Hudson Clothing Company. Amount of debt proved, $203.34.

All exhibits by petitioners and respondents were admitted.

John S. Williams opened for petitioner and argued orally and submitted a written brief.

John W. Manson argued orally for the respondents.

The arguments were closed by John S. Williams, for petitioner.

I also herewith hand up the original petition and answer and replication of petitioner as a part of this record.

J. S. WILLIAMS,
A. S. WOODMAN,
For Petitioner.
MANSON & COOLIDGE,
HUDSON & HUDSON,
F. D. DEARTH,
For Respondents.

A true copy of the record.
Attest:
JOHN F. SPRAGUE,
Referee in Bankruptcy.

Agreement as to Evidence.

In re HUDSON CLOTHING COMPANY.

It is hereby stipulated and agreed that so much of the testimony as appears in the foregoing record, as may be legally admissible, may be used as evidence in court without the signatures of the several witnesses to such testimony.

J S. WILLIAMS,
Attorney for Petitioner.
J W. MANSON,
Attorney for Respondents.

64 *Opinion and Order of Referee.*

[Filed July 14, 1906.]

In re HUDSON CLOTHING COMPANY.

In the District Court of the United States for the District of Maine.

In the Matter of HENRY HUDSON and JAMES HUDSON, as Copartners, Bankrupts.

In Bankruptcy.

Opinion of Sprague, Referee.

On the twenty-second day of October, 1904, certain creditors of Henry Hudson and James Hudson, of Guilford, filed a petition in the United States Court for the District of Maine, alleging, among other things, that said Henry Hudson and James Hudson were merchants and copartners, doing business at said Guilford under the firm name and style of Hudson Clothing Company, and were in-

solvent and had committed acts of bankruptcy. By the docket entries of said District Court it appears that F. E. Guernsey appeared as attorney for the trustees of Henry Hudson, a bankrupt, and one of the alleged copartners, and that on the fifth day of November, A. D. 1904, J. W. Manson and F. D. Dearth, two of the trustees of said Henry Hudson, bankrupt, filed their denial of the bankruptcy of said Henry Hudson and James Hudson, alleged copartners as aforesaid; that on the twentyfirst day of said November the answer of said Henry Hudson and James Hudson was filed in said court, and that on the twenty-second day of said November a further answer of John W. Manson, Albert W. Chapin and F. D. Dearth, trustees of said Henry Hudson, bankrupt, was filed in said court, and the case set down for hearing June 2, 1905, before Hale, Judge of the District Court, which hearing was had June 13, 1905. And on the seventeenth day of said June the said Henry Hudson and James Hudson were duly adjudicated bankrupts, and the matter was on the same day referred to John F. Sprague, referee in bankruptcy, all of which appears by "Petitioner's Exhibit Number 16;" that on the twenty-first day of July, A. D. 1905, a petition for a rehearing of the same was filed in said court by said trustee of
65 said Henry Hudson, bankrupt, which was heard by Hale, Judge of the District Court, and on the eighteenth day of said August this petition for rehearing was denied, and the opinion of Hale, Judge of the District Court, filed.

I find that John S. Williams was duly appointed trustee of the estate of Henry Hudson and James Hudson, copartners under the firm name and style of Hudson Clothing Company, September 12, 1905, and that his bond as said trustee was filed with me as referee, September 18, 1905, and duly approved, and said bond and order approving same transmitted to the District Court, and filed in said court on the nineteenth day of said September. I also find that on the twentythird day of August, 1905, the said trustees of said Henry Hudson, bankrupt, took possession of a certain stock of goods in the store of said Hudson Clothing Company, consisting of clothing, boots, shoes, hats, caps, etc., and the same was appraised by the appraisers of said estate of Henry Hudson, and sold by said trustees under an order of court, upon their application duly made under the provisions of the Bankrupt Act of 1898 and amendments thereto; that on the thirty-first day of January, A. D. 1906, John S. Williams, trustee of said Henry Hudson and James Hudson, copartners as aforesaid, filed with me his petition containing, besides a statement of material facts, the following prayer: "That an order may be made directing said John W. Manson, Albert W. Chapin, and Freeman D. Dearth, as trustees in bankruptcy of the estate of said Henry Hudson, to appear before this court at such time as this court may appoint, and make answer to this petition, but not under oath, answer under oath being hereby specifically waived, and that after hearing in the premises an order may be made herein ordering and directing said John W. Manson, said Albert W. Chapin, and said Freeman D. Dearth, as said trustees of the estate of said Henry Hudson, to pay over to your petitioner as said trustee of the estate

of Hudson Clothing Company, all of the money received by them from the sale of said stock of goods, to wit, the sum of thirty-five hundred dollars, together with legal interest thereon from said date of sale of said stock. Your petitioner also prays that such further orders may be made in the premises as the circumstances of
66 the case may warrant, and that he may be allowed such costs as to your Honor may seem meet."

On the twenty-first day of February, A. D. 1906, the answer of said trustees of the estate of said Henry Hudson, bankrupt, was filed, and the replication of the petitioner was filed June 30, 1906, all of which are herewith handed up with the record of the proceedings in this case.

A hearing on said petition and answer was appointed by me which was adjourned from time to time and finally closed July 6, 1906.

In the opinion of Hale, District Judge (140 Fed. Rep. 49), above referred to, the court in denying the petition for rehearing, and referring to the former hearing on the adjudication of these bankrupts, says:—

"In this matter there was a full hearing on June 13, 1905, upon the matter of adjudication. The question then before the court was whether the alleged copartnership, under the name of Hudson Clothing Company, should be adjudged bankrupt. Upon this question there was a serious controversy of fact and of law. Much testimony was offered, and full oral arguments were made. During the progress of the testimony, the court called the attention of counsel to the fact that there was no stenographer in court taking down the testimony of the witnesses. The court stated to counsel that while, for the purpose of the hearing, the court did not care for a stenographer, still counsel should be reminded that, if either side desired to appeal, it would be necessary to have the testimony taken down and the record preserved. The court further suggested that it would suspend, and allow a stenographer to come in and take down all the proceedings, if it was desired. Counsel took no action in that regard, so that the evidence was not preserved. While all the evidence was fresh in my mind I decided the case, and, on June 17, 1905, I ordered an adjudication in bankruptcy against the said copartnership. No appeal was taken within the ten days mentioned in Bankruptcy Act, July 1, 1898, Chap. 541, 25*a*, 30 Stat. 553 (U. S. Comp. St. 1901, p. 3432). On July 21, however, a petition for a rehearing was filed by one of the alleged partners of the Hudson Clothing Company. Since that time the question of such rehearing has been fully heard by me upon arguments of counsel.

67 "Undoubtedly, the court has a right to grant the rehearing, but, upon a careful consideration of the testimony as it was presented, and of the questions of law involved, I must decide that I see no reason for changing my decision in making the adjudication, and I see no reason to believe that further argument would lead me to reconsider."

* * * * * * *

"In the case at bar I had notified counsel for both parties during the hearing, as I have just stated, in order that they might protect

their rights of appeal, and had called their attention to the fact that no appeal could probably avail unless the testimony were reduced to writing. No stenographer was brought into court, however, and afterwards no papers were filed with reference to an appeal, but this petition for a rehearing was filed on July 21, 1905.

"A court must exercise a very guarded discretion in granting a rehearing. While it has a right to grant a review of its own decree, and a rehearing for the purpose of allowing that decree to be appealed from, it should never do this unless the facts in the case clearly warrant it, as they did in the case of *In re Wright*, to which I have referred. No such facts appear to me to exist in the case at bar. I cannot believe that by reason of any 'series of mishaps' an appeal was not taken, for full notice was given to counsel, and I must assume that they acted advisedly in failing to preserve the record and to apply for an appeal. The court must take into consideration, too, that the petitioners are not the only parties whose rights may be affected by granting a rehearing for the purpose of allowing my decree to be appealed from."

There is no evidence in this case to show, and no facts have appeared, either by reports of the trustee or in the examination of witnesses which have appeared before me, that there were any other assets in said estate of Henry Hudson and James Hudson than the stock of goods now in controversy.

Hence it appears to me, that when the court adjudicated Henry Hudson and James Hudson bankrupts, and when the same subject-matter was again brought before the same court, by petition for rehearing and the petition denied, and no appeal taken, that the whole question of the ownership of the stock of goods now in controversy had been finally settled between these same litigants by de-
68 crees of a court of competent jurisdiction, and that these decrees are now the law governing this case.

It appears to me from the evidence in the case and I so find that when the court adjudged Henry Hudson and James Hudson bankrupts, under the firm name and style of Hudson Clothing Company, it settled the question of the ownership of these goods. The contention was really whether or not they were copartners. If they were, then they were bankrupts, and necessarily the owners of the goods, as there were no other assets belonging to them. The two questions of whether they were copartners, and hence owners of the goods, and whether they were bankrupts, were inseparable. When they were adjudged bankrupts, they were also found by the court to be owners of the goods.

The contention of the respondents is that Henry Hudson was the owner of these goods and never parted with his title to them, and that they as trustees of the estate of said Henry Hudson, bankrupt, have not yet had an opportunity to appear and assert their claims to them. This position was ably argued by counsel. But the case shows that F. E. Guernsey was employed by these trustees as their attorney, and early entered his appearance in the matter of the creditors' petition and that these respondents filed answers to that petition and that he attended "the first meeting" for the trustees of

Henry Hudson's estate (see F. E. Guernsey's testimony, interrogatories 9 and 10), and further that John W. Manson, one of these respondents, was in court in these hearings, as he admits, although he appeared for the Hudsons. See Manson's testimony, interrogatories and answers 11, 12 and 15. He was also, as he admits, present as attorney for Charles F. Cross and other large creditors who controlled the election of the trustees at the first meeting of the creditors in the estate of Henry Hudson. The decree of Hale, judge of the District Court, adjudging these parties bankrupts, and his subsequent opinion on the question of rehearing (*supra*) stand as the law of this case and cannot be attached collaterally.

When a cause has been tried on its merits and judgment has passed thereon for either party, such judgment, while it remains in force, is a bar to any suit for the same cause of action. *Hughes v. Blake*, Fed. Cases, No. 6845 (1 Mason, 515.)

69 A controversy once decided by a court having jurisdiction cannot be re-examined by another court of concurrent jurisdiction in a suit between the same parties or their privies. *Parrish v. Ferris*, 67 U. S. (2 Black) 606.

The District Court had jurisdiction of the matters passed on at both of the hearings herein referred to, and the judgment of the court remains unreversed, and the same issues cannot be afterwards litigated by an independent proceeding. *Townsend v. Townsend*, 60 Mo. 246.

An adjudication sustaining a demurrer going to the merits is *res judicata*. Bouvier's Law Dictionary (Rawles' Revision, 1897) page 899 and cases there cited.

A mass of testimony on both sides relating to the question of whether Henry Hudson and James Hudson were copartners under the firm name and style of Hudson Clothing Company has been admitted, and is a part of the record. But I have not deemed it necessary to consider it, as the issue of title to the goods in contention before me is *res judicata*.

It is therefore ordered that the said John W. Manson, Albert W. Chapin and Freeman D. Dearth, as trustees of the estate of Henry Hudson, a bankrupt in bankruptcy, pay over to John S. Williams, as trustee of the estate of Henry Hudson and James Hudson, copartners under the firm name and style of Hudson Clothing Company, the sum of thirty-five hundred dollars, it being the amount for which said stock of goods was sold, and lawful interest on the same from August 15, 1905, to July 6, 1906.

And it is further ordered that the respondents herein, being the said John W. Manson, Albert W. Chapin and Freeman D. Dearth, pay to the said John S. Williams, trustee as aforesaid, the costs of these proceedings, to be taxed by the clerk of this court. *In Re Thomas A. Scott*, 7th Am. B. R. 710.

Upon the question of interest, it has appeared to me that the trustees in taking possession of the stock of goods properly scheduled and appraised as the assets of Henry Hudson were acting entirely within their line of duty, and that they did not hold them wrong-

fully until the filing of the opinion of the court above cited;
70 since which time they have held them wrongfully and interest should be charged against them.

JOHN F. SPRAGUE,
Referee in Bankruptcy.

6

Petition for Review.

[Filed July 20, 1906.]

In the District Court of the United States for the District of Maine.
In Bankruptcy.

HUDSON CLOTHING COMPANY, Bankrupt,
v.
HENRY HUDSON, Bankrupt.

The petition of John W. Manson, of Pittsfield, in the county of Somerset and State of Maine, Albert W. Chapin, of Monson, in the county of Piscataquis and State of Maine, and Freeman D. Dearth, of Dexter, in the county of Penobscot and State of Maine, Trustees of Henry Hudson, bankrupt, of Guilford, in said county of Piscataquis, respectfully represents:—

1. That on the fourth day of August, 1904, said Henry Hudson was duly adjudicated a bankrupt by an order of this court, and that on the twenty-third day of August, 1904, your petitioners were chosen and elected trustees in the estate of said Henry Hudson, and duly qualified, and ever since have been and now are acting as such trustees.

2. That on the thirty-first day of January, A. D. 1906, John S. Williams, trustee in bankruptcy of an alleged copartnership consisting of Henry Hudson and James Hudson, of said Guilford, filed in this court his petition praying that your petitioners be ordered and directed by this court to pay over to said John S. Williams, as trustee in bankruptcy, all money received by your petitioners from the sale of a stock of goods in a store in said Guilford, which on the twenty-third day of August, 1904, your petitioners sold as the property of said Henry Hudson, bankrupt, of the value of $3500.

71 That on the twenty-first day of February, A. D. 1906, your petitioners filed an answer to said petition of John S. Williams, trustee in bankruptcy, as aforesaid, and afterwards said matter came on to be heard before Honorable John F. Sprague, referee in said estate, and testimony was taken thereon before the said referee, and the matter submitted to him, and afterwards on the fourteenth day of July, A. D. 1906, the said referee entered an order requiring your petitioners to pay over to John S. Williams, as trustee aforesaid, the sum of $3500, being the value of said stock of goods which your petitioners sold, and lawful interest on the same from August 15, 1905, to July 6, 1906, and also the cost of these proceedings.

Your petitioners now aver that the rulings and decisions of the

said referee in finding the facts and making said order were erroneous both as to the fact and the law, because

1. No partnership composed of Henry and James Hudson doing business under the name of Hudson Clothing Company ever existed as a matter of fact.

2. If any such copartnership did exist it had no title to any of said goods which said trustees of the estate of Henry Hudson sold and for which they received the aforesaid sum of $3500.

3. All the said goods which were sold for the aforesaid sum of $3500 were the individual and sole property of said Henry Hudson, now bankrupt, whose trustees the petitioners herein are, and the title to said goods upon the bankruptcy of said Henry Hudson and the election of said trustees vested in the said trustees of the estate of Henry Hudson.

4. The evidence as taken in the hearing before said referee supports the above three contentions of the said trustees of the estate of Henry Hudson, and the finding of the said referee is against the weight and force of all the evidence in said case and contrary to law.

Wherefore your petitioners pray for a review by the judge of this court of the order made by said referee and file this petition therefor, and pray that the errors complained of and the questions of law and fact raised before said referee and decided by him may be certified by the said referee to the Honorable Clarence Hale, the district judge, that he may review the order heretofore made and
72 make and enter an order or direct the referee to make and enter an order denying the prayer of John S. Williams, trustee of the alleged bankrupt estate of the Hudson Clothing Company.

JOHN W. MANSON,
ALBERT W. CHAPIN,
FREEMAN D. DEARTH,
By MANSON & COOLIDGE,
Their Attorneys.

In re HUDSON CLOTHING COMPANY.

The following is a true copy of the order made by me in this matter July 13, A. D. 1906, to wit:

"It is therefore ordered that the said John W. Manson, Albert W. Chapin and Freeman D. Dearth, as trustees of the estate of Henry Hudson, a bankrupt, in bankruptcy, pay over to John S. Williams as trustee of the estate of Henry Hudson and James Hudson, copartners under the firm name and style of Hudson Clothing Company, the sum of thirty-five hundred dollars, it being the amount for which said stock of goods was sold, and lawful interest on the same from August 15, 1905, to July 6, 1906.

"And it is further ordered that the respondents herein being the said John W. Manson, Albert W. Chapin and Freeman D. Dearth

pay to the said John S. Williams, trustee as aforesaid, the costs of these proceedings to be taxed by the clerk of this Court."

Attest:

JOHN F. SPRAGUE,
Referee in Bankruptcy.

Referee's Certificate on Review.

[Filed July 20, 1906.]

In the District Court of the United States for the District of Maine.
In Bankruptcy.

In the Matter of HENRY HUDSON and JAMES HUDSON, Copartners under the Firm Name and Style of the Hudson Clothing Company, Bankrupt.

To the Honorable Clarence Hale, Judge of said court:

I, John F. Sprague, the referee in bankruptcy, in charge of this proceeding, do hereby certify:

73 That in the course of such proceeding, an order, a copy of which is hereunto annexed to the petition hereinafter referred to, was made and entered on the thirteenth day of July, A. D. 1906, and on the nineteenth day of said July, John W. Manson, Albert W. Chapin and Freeman D. Dearth, trustees of the estate of Henry Hudson, a bankrupt in bankruptcy, and respondents in such proceeding, feeling aggrieved thereat, filed a petition for review, which was granted.

That all of the evidence and all of the pleadings and other papers filed with me herein which are pertinent to this review were transmitted to the court on the eighteenth day of said July, A. D. 1906.

That the question presented on this review is whether the issue regarding the title to a certain stock of goods as the issue of such title was presented before me, and claimed by the trustee herein as the property of this estate, as fully appears by his petition filed herein, and also claimed by the said trustees of Henry Hudson, a bankrupt in bankruptcy, is now *res judicata*.

Dated at Monson, Maine, July 19, 1906.

Respectfully submitted, JOHN F. SPRAGUE,
Referee in Bankruptcy.

Opinion of the District Court.

[Filed November 1, 1906.]

United States District Court. In Bankruptcy.

UNITED STATES OF AMERICA, *District of Maine:*

No. 106.

In re HUDSON CLOTHING COMPANY.

Opinion of the District Court.

November 1, 1906.

HALE, *District Judge:*

John F. Sprague, Esq., referee in bankruptcy, certifies that, in the course of the proceedings in this case, he made the following order:

"That the said John W. Manson, Albert W. Chapin and Freeman D. Dearth, as trustees of the estate of Henry Hudson, a bank-
74 rupt in bankruptcy, pay over to John S. Williams, as trustee of the estate of Henry Hudson and James Hudson, copartners under the firm name and style of Hudson Clothing Company, the sum of thirty-five hundred dollars, it being the amount for which said stock of goods was sold, and lawful interest on the same from August 15, 1905, to July 6, 1905.

"And it is further ordered that the respondents herein, being the said John W. Manson, Albert W. Chapin and Freeman D. Dearth, pay to the said John S. Williams, trustee as aforesaid, the costs of these proceedings, to be taxed by the clerk of this court."

The referee further reports that the trustees of the estate of Henry Hudson, in bankruptcy, have filed a petition for review of this action of the referee. All the evidence and all the papers pertinent to the review are before me, and the case has been fully argued by counsel. The trustees in bankruptcy of Henry Hudson take the ground that no such partnership ever existed as is found by the referee under the name of Hudson Clothing Company, and that, if any such partnership did exist, it had no title to any of the goods in question; but that said goods were the property of Henry Hudson, now in bankruptcy.

The original petition in involuntary bankruptcy in this case alleges that Henry Hudson and James Hudson constituted the partnership of the Hudson Clothing Company; that the partnership owned the stock of goods, and that an act of bankruptcy had been committed in connection with that stock of goods. In the matter of adjudication, this court had a full hearing in June, 1905. Much testimony was before the court on the question of the existence of a partnership, and as to the ownership of the goods by the alleged

partnership. Petitioners claimed that Henry and James Hudson were partners in fact, and that they owned the stock of goods in question. The matter was fully argued by counsel; the court ordered the partnership adjudicated bankrupts. Afterwards, upon the question of a rehearing, I gave an opinion, which is found in 140 Fed. Rep., 49.

In the matter now before me, the referee says:

"Hence, it appears to me that, when the court adjudicated Henry Hudson and James Hudson bankrupts, and when the same subject-matter was again brought before the same court, by petition for rehearing, and the petition denied, and no appeal taken, that the whole question of the ownership of the stock of goods now in con-
75 troversy had been finally settled between these same litigants by decrees of a court of competent jurisdiction, and that these decrees are now the law governing this case.

"It appears to me from the evidence in the case, and I so find, that when the court adjudged Henry Hudson and James Hudson bankrupts, under the firm name and style of Hudson Clothing Company, it settled the question of the ownership of these goods. The contention was really whether or not they were copartners. If they were, then they were bankrupts, and necessarily the owners of the goods, as there were no other assets belonging to them. The two questions of whether they were copartners and hence owners of the goods, and whether they were bankrupts, were inseparable. When they were adjudged bankrupts, they were also found by the court to be the owners of the goods."

The referee further found that the question presented is now *res judicata*. All the counsel in the case have asked me, however, to examine the evidence and to come to a conclusion on the testimony itself as to whether the referee should be sustained in making the order which he has made. I have accordingly examined with care the testimony and the mixed questions of law and fact which have been fully argued.

Counsel for the bankrupt estate of Henry Hudson have urged with great earnestness that, upon all the evidence, there has been no partnership proven in the case; that, on the most favorable view which may be taken for the petitioners, the evidence shows only certain acts of the alleged bankrupts in holding themselves out as copartners; that those acts have a tendency to prove merely an estoppel to deny partnership; that proving such estoppel is a different thing from proving a partnership in fact; and that such estoppel, if proven, would not warrant an adjudication in bankruptcy. I shall not undertake to burden the record by reciting in detail the testimony upon this point. There is evidence tending to show that Henry Hudson contributed the stock of goods in the first instance; that James Hudson contributed one thousand dollars of his own money; that a bank account was opened; that James Hudson deposited his one thousand dollars; that checks were drawn upon the account for the partnership business; that, out of the one thousand dollars brought in by James Hudson, bills were paid for goods which

were put into the store by Henry Hudson; that Henry and
76 James Hudson intended to form a corporation; that they took steps to form a corporation; that they assumed a corporate name, but that they never completed the organization. Upon a careful review of the record, I do not find evidence tending to show that Henry and James Hudson held themselves out to the public as a partnership, but rather that the contrary is true. They did, however, intend to form a corporation, and they took the initial steps for organization, but never organized it. The whole testimony induces the belief that they were partners in fact.

In *Frost v. Walker*, 60 Maine, 470, in speaking for the Supreme Court of the State, Judge Walton said:

"An unincorporated joint stock company is a mere partnership and each member is personally liable for all its debts. . . . The New England Express Company was never incorporated. It was, therefore, a mere partnership, and each member was personally liable for all its debts."

The court further held that, by contributing to the actual working capital of the company, the members became entitled to share in the profits of the business and became copartners. This is the leading case in Maine touching this question. The court goes far beyond holding a mere partnership by estoppel; it holds that there was a partnership in fact.

When Federal Courts have construed the law of partnership as it pertains to bankruptcy matters, they have held that a mere holding out of a partnership is not sufficient to warrant an adjudication; otherwise, a bankrupt might become liable to some creditors and not liable to others; and the proceedings in bankruptcy might be good as to some and void as to others. Partnership in fact must be actually proven in order to sustain an adjudication. In the Beckwith case, 130 Fed. Rep. 475, which has been brought to my attention, the District Court of Pennsylvania reviewed the law quite fully upon this point; the statement of the law is valuable, although the decision was overruled on the ground that the testimony was not sufficient to establish the existence of a partnership in that particular case. *Jones v. Burnham*, etc., 133 Fed. Rep. 986.

While it is clear that, in order to proceed to adjudication, a part-
77 nership in fact must be proved, of course, this may be proved by circumstantial, as well as by direct, testimony. The subject-matter of the different kinds of evidence that are admitted by the courts to prove partnership is discussed in Wigmore on Evidence, Sect. 1249, and cases cited; Greenleaf on Evidence, Sects. 477-481.

Upon a careful analysis of the evidence, I come to the conclusion that the testimony is not of a character to show a mere partnership by estoppel; but that it does show a partnership in fact, and that the goods in question belonged to that partnership; and I so find.

There is no question but that the stock of goods was sold by the trustees of the bankrupt estate of Henry Hudson for the sum of three thousand five hundred dollars; that this sum was in their possession at the time of the filing of the petition to pay over the funds, upon

which this proceeding is founded; and that it is still in their possession.

Under the law and the rules in bankruptcy, however, they did not receive interest upon it nor derive any benefit from it. In an action of trover against them, they might be chargeable with interest. But this is a proceeding in bankruptcy, in which the court is passing upon the disposal of a certain fund in its custody; in such proceeding, and upon the testimony before me, the trustees of the estate of Henry Hudson in bankruptcy should not be charged with interest.

In the view that I have taken of the case, it is not necessary for me to decide the question of *res judicata*, upon which the referee based his decision.

The order of the referee is sustained, except as to the matter of interest.

And it is ordered that John W. Manson, Albert W. Chapin and Freeman D. Dearth, trustees of the estate of Henry Hudson, in bankruptcy, pay over the sum of three thousand five hundred dollars to John S. Williams, trustee in bankruptcy of the Hudson Clothing Company, a copartnership consisting of Henry Hudson and James Hudson.

The further order of the referee as to costs is sustained; and it is ordered that the respondents pay to the said John S. Williams, trustee as aforesaid, the costs of the proceedings before the referee, and of the further proceedings in this court.

78 *Decree.*

[Filed November 28, 1906.]

In the District Court of the United States for the District of Maine.
In Bankruptcy.

JOHN S. WILLIAMS, Trustee in Bankruptcy of the Estate of Hudson Clothing Company, Petitioner,

v.

JOHN W. MANSON, ALBERT W. CHAPIN, and FREEMAN D. DEARTH, Trustees in Bankruptcy of the Estate of Henry Hudson.

At Portland, in said District of Maine, on the twenty-eighth day of November, A. D. 1906, upon the petition of John W. Manson, Albert W. Chapin and Freeman D. Dearth, trustees in bankruptcy of the estate of Henry Hudson, for review of the order of the referee in said matter made on the thirteenth day of July, A. D. 1906; now, therefore, after hearing arguments of counsel, and after due consideration of the same, said order of the referee is sustained except as to the matter of interest; wherefore it is hereby ordered and decreed that John W. Manson, Albert W. Chapin and Freeman D. Dearth, trustees in bankruptcy of the estate of Henry Hudson, pay over the sum of thirty-five hundred dollars ($3500) to John S. Williams, trustee in bankruptcy of the estate of the Hudson Cloth-

ing Company, a copartnership consisting of Henry Hudson and James Hudson, and that the said trustees of the estate of Henry Hudson pay to said John S. Williams, said trustee of the estate of the Hudson Clothing Company, the costs of the proceedings upon said petition before the referee, and also the costs of further proceedings in this court upon the petition for a review of said order of the referee.

By the Court,

[L. S.] JAMES E. HEWEY, *Clerk.*

79 *Petition for Appeal.*

[Filed December 7, 1906.]

The District Court of the United States for the District of Maine.
In Bankruptcy.

No. 106.

In the Matter of HUDSON CLOTHING COMPANY, Bankrupt.

Petition on appeal of John W. Manson, Albert W. Chapin and Freem- Dearth, trustees of the estate of Henry Hudson, a bankrupt, in bankruptcy.

The above-named trustees in bankruptcy considering themselves aggrieved by the judgment made and entered on the twenty-eighth day of November, A. D. 1906, in the above entitled cause, do hereby appeal from such judgment to the United States Circuit Court of Appeals for the First Circuit for the reasons specified in the assignment of errors which is filed herewith, and they pray that this appeal may be allowed, and that a transcript of the record, the proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the First Circuit.

Dated this third day of December, A. D. 1906.

JOHN W. MANSON,
ALBERT W. CHAPIN,
FREEMAN D. DEARTH,
By Their Attorneys, MANSON & COOLIDGE,
Pittsfield, Maine.

The foregoing claim of appeal is allowed this seventh day of December, A. D. 1906.

CLARENCE HALE,
District Judge.

80 *Assignment of Errors.*

[Filed December 7, 1906.]

[This heading—the Court and Title of the Case—is the same as on Petition for Appeal, page 79, and is omitted here.—JOHN G. STETSON, *Clerk.*]

And now, on the third day of December, A. D. 1906, come John W. Manson, Albert W. Chapin and Freeman D. Dearth, trustees of the estate of Henry Hudson, bankrupt, in bankruptcy, by Manson & Coolidge, their solicitors, and say that the decree in said cause, entered on the twenty-eighth day of November, A. D. 1906, is erroneous and against the just rights of said trustees in bankruptcy for the following reasons:—

First, because the evidence certified by the referee to be correct shows that no partnership composed of Henry Hudson and James Hudson doing business under the name of the Hudson Clothing Company ever existed as a matter of fact.

Second, because from the evidence certified by the referee to be correct it appears that if any such copartnership did exist it had no title to any of the goods which said trustees of the estate of Henry Hudson sold, and for which they received the sum of thirty-five hundred dollars, which they are ordered by the District Court to turn over to said John S. Williams, trustee in bankruptcy of the Hudson Clothing Company.

Third, because said evidence shows that the goods which were sold for the aforesaid sum of thirty-five hundred dollars were individually and solely the property of said Henry Hudson at the time of his adjudication a bankrupt, and that the title to said goods upon the bankruptcy of said Henry Hudson and the election of said trustees vested in the said trustees of the estate of Henry Hudson.

Fourth, because the record in the proceedings relating to the adjudication of said Hudson Clothing Company, a bankrupt, and said evidence shows that said trustees were not a party to the proceedings adjudicating the Hudson Clothing Company bankrupt, and that said proceedings of adjudication are in no wise binding on said trustees.

Fifth, because the findings and order of the referee and
81 judgment and decree of this court in sustaining the action of the referee is erroneous and illegal.

Wherefore, the said trustees of the estate of Henry Hudson, in bankruptcy, pray that the said judgment and decree be reversed and that the said court may be directed to enter a decree and judgment denying the petition of said John S. Williams, trustee.

MANSON & COOLIDGE,
Solicitors for said Trustees of Henry Hudson.

Appellants' Præcipe to Clerk.

[Filed December 7, 1906.]

[This heading—the Court and Title of the Case—is the same as on Decree, page 78, and is omitted here.—JOHN G. STETSON, *Clerk.*]

TO THE CLERK: You are requested to take an abstract of record to be filed in the United States Circuit Court of Appeals for the First Circuit pursuant to an appeal allowed in the above-entitled case; and to include in such transcript of record the following, and no other papers or exhibits, to wit:—

I. Petition of John S. Williams, Trustee, but not including:—

(*a*) Order of return of service.

(*b*) Schedule of stock annexed as Exhibit A.

(*c*) Petition for private sale annexed as Exhibit B.

(*d*) Order thereon annexed as Exhibit C.

II. Answer of Trustees of Estate of Henry Hudson before Referee.

III. Records of Proceedings and Testimony before Referee including the following and excluding other exhibits:—

(*a*) All the printed portion of Petitioner's Exhibit 1.

(*b*) The first four printed lines and the last two printed lines of Petitioner's Exhibit 2.

(*c*) All of Petitioner's Exhibit 4.

(*d*) All of Petitioner's Exhibit 5.

(*e*) All of Petitioner's Exhibit 6.

(*f*) All of Petitioner's Exhibit 7.

(*g*) All of Petitioner's Exhibit 8.

(*h*) All of Petitioner's Exhibit 9.

(*i*) All of Petitioner's Exhibit 10.

(*j*) All of Petitioner's Exhibit 16.

(*k*) All of Petitioner's Exhibit 17.

82 (*l*) All of Petitioner's Exhibit 18.

(*m*) All of Petitioner's Exhibit 19.

(*n*) The first two printed lines and the last three printed lines of Petitioner's Exhibit 20.

(*o*) The first two printed lines and the last printed line of Petitioner's Exhibit 21.

(*p*) The first two printed lines and the last printed line of Petitioner's Exhibit 22.

(*q*) The first six printed lines and the last two printed lines of Petitioner's Exhibit 23.

(*r*) All of Petitioner's Exhibit 25.

(*s*) Respondents' Exhibit No. 1.

(*t*) Respondents' Exhibit No. 15.

(*u*) Respondents' Exhibit No. 16.

(*v*) Respondents' Exhibit No. 22.

(*w*) Respondents' Exhibit No. 25.

(*x*) Respondents' Exhibit No. 26.

(*y*) Respondents' Exhibit No. 27.
IV. Opinion and Order of Referee.
V. Petition on Referee's Findings.
VI. Referee's Certificate on Review.
VII. Opinion of Judge Hale.
VIII. Decree of Judge Hale.
IX. Trustees' Claim of Appeal.
X. Assignment of Errors.
XI. Citation and Service.
XII. Præcipe for Transcript.
XIII. Certificate.

MANSON & COOLIDGE,
Attorneys for Appellants.

Appellee's Petition to Clerk.

[Filed December 7, 1906.]

[This heading—the Court and Title of the Case—is the same as on Decree, page 78, and is omitted here.—JOHN G. STETSON, *Clerk.*]

TO THE CLERK: Whereas John W. Manson, Albert W. Chapin and Freeman D. Dearth, trustees in bankruptcy of the estate of Henry Hudson, appellants in the above-entitled case, have filed in this court a præcipe, addressed to you, wherein you are requested to take an abstract of record to be filed in the United States
83 Circuit Court of Appeals for the First *Court*, pursuant to an appeal allowed in the above-entitled case, and wherein they have requested you to include in such transcript of record divers papers and exhibits specifically mentioned in said præcipe, and to include in such transcript of record no other papers or exhibits, and whereas said præcipe does not include divers papers and exhibits which, in fact, constitute a part of the record of the above-entitled case, and whereas the appellee, John S. Williams, trustee in bankruptcy of the estate of Hudson Clothing Company, although willing to do so, has been unable to arrange with said appellants to agree to a stipulation that designated portions only of some of such papers and exhibits shall be included in the transcript of the record.

Now, therefore, said appellee requests you to include in the transcript of the record to be filed in the United States Circuit Court of Appeals for the First Circuit the following papers and exhibits, to wit:—

A. Petition of John S. Williams, trustee in bankruptcy of the estate of Hudson Clothing Company, against John W. Manson, Albert W. Chapin and Freeman D. Dearth, trustees in bankruptcy of the estate of Henry Hudson, including all exhibits annexed thereto, also the referee's order of notice thereon and officer's return of service.

B. Replication of John S. Williams, said trustee, to the answer

of John W. Manson, Albert W. Chapin and Freeman D. Dearth, said trustees.

C. Record of proceedings and testimony before the referee, including all of the petitioner's exhibits, to wit, petitioner's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25, and all of respondents' exhibits, to wit, respondents' Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27.

D. Petition for review of referee's order.

E. This petition of the appellee, addressed to the clerk of this court, requesting him to include papers and exhibits in the transcript of the record.

F. All certificates and attestations of James E. Hewey, Clerk of said District Court, and of E. M. Russell, Deputy Clerk of
84 said District Court, which are written upon or affixed to any of the papers or exhibits specified in said præcipe or in this petition.

G. Any order or orders of the District Judge which may be made upon said præcipe filed by the appellants, or upon this petition filed by the appellee.

H. You are also requested to include in the transcript of the record all of the papers and exhibits which are included in the præcipe of the appellants, and which have not been hereinbefore specified.

ALBERT S. WOODMAN,
JOHN S. WILLIAMS,
Attorneys for Appellee.

PETITIONER'S EXHIBITS.

PETITIONER'S EXHIBIT 1.

Henry Hudson, Pres. James Hudson, Treas. & Mgr.

Hudson Clothing Co., Dealers in Ready-made Clothing and Gents' Furnishings, Hats, Caps, Boots and Shoes, Newbegin Block, Main Street.

GUILFORD, ME., *June* 8, 1904.

GENTLEMEN: Please find enclosed note I should have sent before only H. Hudson was away to Wiscasset.

Yours truly, HUDSON CLOTHING CO.

PETITIONER'S EXHIBIT 2.

The Entire Stock of the Hudson Clothing Co. to be Closed Out, Commencing Wednesday, October 12, 1904.

This is a chance one seldom gets to get such bargains. Everything to go at less than half price.

39 suits, long pants, 33, 34, 35 and 36 at $2.00 per Suit.
Odd suits, former prices $8, 10 and 12, at $5.00
All our $10, 12.50 and 13.50 suits at $7.50
All our $15 suits at $8.50
All our $16, 18 and 20 suits at $10.00
85 Men's odd pants, former price $1.25 to 4.00 to go at 75c. to 2.50.
Men's and boys' outside summer shirts in blacks, stripes and fancy, former price 50c., to go at 35c. per pr., 3 for $1.00.
All summer underwear that sold at 25c. and 50c. to go at 3 pieces for 50c., 2 for 75c.
6 doz. caps at ..... 15c. each
10 doz. caps at ..... 10c. "
One case of hats at ..... $1.00 "
One case of hats at ..... 50c. "
49 doz. linen collars at ..... 5c. "
Children's summer suits, former prices 50c., 75c. and $1.00 to close at 25c., 35c. and 50c.
Men's, women's and boys' shoes to be sold at a cut price too low to quote. Remember these goods are all right and not old or shop-worn.
Terms Strictly Cash. No Goods to be Returned or Exchanged.

JAS. HUDSON CO.

Guilford, October 10.

PETITIONER'S EXHIBIT 3.

UNITED STATES OF AMERICA, *District of Maine, ss:*

In the United States District Court in and for said County.

In the Matter of the Petition of the ROBINSON BLAKE COMPANY, THE J. H. ARNOLD SHOE COMPANY, and FRED. S. CROSBY and CHARLES DWINEL, under the Name and Style of Crosby & Dwinel, Petitioners,

v.

THE HUDSON CLOTHING COMPANY, Alleged to be a Partnership, Alleged to be Composed of Henry Hudson and James Hudson.

At Portland in said District on the 5th day of November, A. D. 1904.

And now the said J. W. Manson, A. W. Chapin and F. D. Dearth, trustees in bankrupty of the estate of Henry Hudson, one of the

alleged copartners, appear and deny that the alleged partnership has committed the acts of bankruptcy set forth in said petition, or that said alleged partnership is insolvent, and aver that said partnership should not be declared bankrupt for any cause in said petition alleged, and this they pray may be inquired of by the court.

And the trustees further say and allege in behalf of the
86 estate of Henry Hudson, one of the alleged partners, doing business under the name and style of the Hudson Clothing Company, that no partnership ever existed between said Henry Hudson and said James Hudson, or that said Henry Hudson or James Hudson ever did business under the name and style of the Hudson Clothing Company as a copartnership; that said Hudson Clothing Company as a copartnership never owned any property, never contracted any debts as a copartnership, and never did business as a copartnership, and this they pray may be inquired of by the court.

(Signed) J. W. MANSON,
Per F. D. D.
(Signed) F. D. DEARTH,
Trustees of the Estate of Henry Hudson.

STATE OF MAINE, *Penobscot, ss:*

NOVEMBER 5, 1904.

Subscribed and sworn to by F. D. Dearth above-named, before me, this fifth day of November, A. D. 1904.

(Signed) WESLEY H. JUDKINS,
Justice of the Peace.

A true copy of the original on file in bankruptcy case, involuntary, No. 106 of files of United States District Court for Maine District.

Witness my hand and seal of said court at Portland this nineteenth day of February, 1906.

Attest:
JAMES E. HEWEY, *Clerk.*

PETITIONER'S EXHIBIT 4.

[This heading—the Court and Title of the Case—is the same as on Petitioner's Exhibit 3, page 85, and is omitted here.—JOHN G. STETSON, *Clerk.*]

And now the said J. W. Manson, A. W. Chapin and F. D. Dearth, trustees in bankruptcy of the estate of Henry Hudson, one of the alleged copartners, appear and deny that the alleged partnership has committed the acts of bankruptcy as set forth in said petition, or that said alleged partnership is insolvent, and aver that said partnership should not be declared bankrupt for any cause in said petition alleged and this they pray may be inquired of by the court.

And the trustees further say and allege in behalf of the estate of Henry Hudson, one of the alleged partners, doing business under the name and style of the Hudson Clothing Company, that no partnership ever existed between said Henry Hudson and said James

Hudson, or that said Henry Hudson or James Hudson ever did business under the name and style of the Hudson Clothing Company as a copartnership; that said Hudson Clothing Company as a copartnership never owned any property, never contracted any
87 debts as a copartnership, and never did business as a copartnership, and this they pray may be inquired of by the court.

(Signed) J. W. MANSON,
A. W. CHAPIN,
FREEMAN D. DEARTH,
Trustees of Estate of Henry Hudson, Bankrupt.

STATE OF MAINE, *Penobscot, ss:*

NOVEMBER 15, 1904.

Subscribed and sworn to before me this fifteenth day of November, A. D. 1904, by the above-named Freeman D. Dearth, as trustee aforesaid.

(Signed) WESLEY H. JUDKINS,
Justice of the Peace.

SOMERSET, *ss:*

NOVEMBER 18, 1904.

Subscribed and sworn to before me this eighteenth day of November, A. D. 1904, by J. W. Manson, as said trustee.

(Signed) HARRY R. COOLIDGE.
Justice of the Peace.

PISCATAQUIS, *ss:*

NOVEMBER 19, 1904.

Subscribed and sworn to before me this nineteenth day of November, A. D. 1904, by the above-named A. W. Chapin, as said trustee.

(Signed) EDWIN R. HAYNES,
Justice of the Peace.

A true copy of original on file in bankruptcy case, involuntary, No. 106 of files of United States District Court for Maine District.

Witness my hand and seal of said court at Portland this nineteenth day of February, 1906.

Attest:

JAMES E. HEWEY, *Clerk.*

PETITIONER'S EXHIBIT 5.

[Copy.]

DOVER, ME., *Nov.* 4, 1904.

Mr. James E. Hewey, Portland, Me.

DEAR SIR: I would ask you to enter my name for the estate of Henry Hudson in the matter of petition of Robinson Blake Company, J. H. Arnold Shoe Company and Crosby & Dwinel *v.* Hudson

Clothing Company, alleged to be composed of Henry Hudson and James Hudson, which petition is returnable in your Court at 10 o'clock Nov. 5th.

Respectfully yours,

F. E. GUERNSEY.

88 PETITIONER'S EXHIBIT 6.

[Copy.]

DOVER, MAINE, *Nov.* 8, 1904.

Clerk of the U. S. District Court, Portland, Maine.

DEAR SIR: I enclose to you herewith answer to petition for bankruptcy proceedings against the estate of Hudson Clothing Company, an alleged partnership. I file this as attorney in behalf of the trustees of Henry Hudson estate.

Sincerely yours,

F. E. GUERNSEY.

PETITIONER'S EXHIBIT 7.

[Copy.]

DOVER, MAINE, *Nov.* 14, 1904.

James E. Hewey, Esq., Portland, Maine.

BRO. HEWEY: Your letter of Nov. 12 relative to the motion as to the answer filed to the petition in the Hudson Clothing Company matter. I thank you for the information therein contained. We shall file further answer, and as I am to be away until December 1st, Bro. Williams for the creditors has agreed that the matter shall stand until I return and can take it up.

Respectfully yours,

F. E. GUERNSEY.

PETITIONER'S EXHIBIT 8.

[Copy.]

PITTSFIELD, ME., *July* 20, 1905.

James E. Hewey, Clerk of U. S. Court, Portland, Me.

DEAR SIR: Enclosed we send you a petition for rehearing in the Hudson Clothing Company matter with a copy of the petition which you may wish to use in the service. I am not informed in regard to the practice of rehearing whether a rehearing is to be at the time ordered in the service to appear, or whether the appearance is made by the other party and the hearing had at some subsequent time. Will you kindly inform us in regard to the matter?

Enclosed please find our check for $1.50 in payment of
89 the copies of the answers of James & Henry Hudson and the copy of the adjudication of the Hudson Clothing Company.

Yours truly,

MANSON & COOLIDGE.

PETITIONER'S EXHIBIT 9.

[Copy.]

PITTSFIELD, ME., *July* 28, 1905.

James E. Hewey, Clerk of U. S. Court, Portland, Me.

DEAR SIR: Will you please inform us what action, if any, you have taken in regard to the petition for rehearing in the matter of the Hudson Clothing Company in Bankruptcy, which we sent you about a week ago.

Yours truly,

MANSON & COOLIDGE.

PETITIONER'S EXHIBIT 10.

Articles of Association.

In accordance with the provisions of the Revised Statutes of the State of Maine, Chapter 48, Sections 16, 17, 18, 19 and 20, and statutes amendatory thereof and additional thereto, we, the undersigned, whose residences are set against our respective signatures, hereby associate ourselves together by these written Articles of Agreement, for the purpose of organizing a corporation for the following purposes, to wit:—

Purchasing, owning, controlling, selling, conveying, mortgaging, using and leasing real estate; manufacturing clothing of all kinds, buying and selling the same and carrying on the clothing business; dealing in gents' furnishing goods, boots, shoes, hats, caps, dress goods, fancy goods, and everything in the dry goods business; buying and selling all kinds of house furnishings, notions and small wares; buying and selling and dealing in all kinds of country produce and dairy products, and carrying on the business of merchant and trader in all its various branches, and doing whatever things may be necessary, useful or convenient in the business aforesaid.

Said corporation shall be located at Guilford, county of Piscataquis, State of Maine, and shall have its office at said Guilford. The first meeting shall be held in accordance with Section 17 of said Chapter 48, as amended, at the office of Henry Hudson, in
90 Guilford aforesaid on Saturday, the 12th day of July, A. D. 1902, at seven o'clock in the evening.

Dated at Guilford this 25th day of June, A. D. 1902.

A true copy of the original Exhibit No. 1, a part of the examination of Henry Hudson, bankrupt.

Attest:

JOHN F. SPRAGUE.
Referee in Bankruptcy.

PETITIONER'S EXHIBIT 11.

0536.

$85.00. GUILFORD, *May* 13, 1904.

Sixty days after date we promise to pay to the order of Robinson Blake Company Eighty-five Dollars, at Second National Bank, Bangor, Maine.

Value received.

No. —, Due July 12.

HUDSON CLOTHING CO.

(Signed) JAMES HUDSON, *Mgr.*

Across the face is written: Protested for Non-Payment Jul. 12, 1904. George A. Crosby, Notary Public.

[Endorsement on back:] James Hudson, Henry Hudson, Robinson Blake Co., by J. G. Blake, Treas'r.

$166.25. GUILFORD, ME., *March* 29, 1904.

Two months after date I promise to pay to the order of Myself One hundred sixty-six and 25/100 Dollars, at the First National Bank of Guilford, with interest.

Value received.

No. —, Due ——.

HUDSON CLOTHING CO.

[Endorsement on back:] Hudson Clothing Co. Holden waiving demand and notice. Henry Hudson, James Hudson.

91 $100.00. GUILFORD, *May* 28, 1904.

Thirty days after date we promise to pay to the order of Robinson Blake Co. One Hundred Dollars, at Second National Bank, Bangor, Me.

Value received.

No. C 3259, Due June 27, 1904.

HUDSON CLOTHING CO.

(Signed) JAMES HUDSON, *Mgr.*

Across the face is written: Protested for Non-Payment June 27, 1904. George A. Crosby, Notary Public.

[Endorsed on back:] Henry Hudson, James Hudson.

0532.

$136.46. GUILFORD, *April* 28, 1904.

Sixty days after date we promise to pay to the order of Robinson Blake Company One hundred thirty-six 46/100 Dollars, at Second National Bank, Bangor, Me.

Value received.

No. —, Due June 27, 1904.

HUDSON CLOTHING CO.

(Signed) JAMES HUDSON, *Mgr.*

Across the face is written: Protested for Non-Payment Jun. 27, 1904. George A. Crosby, Notary Public.

[Endorsed on back:] (Signed) Henry Hudson, Robinson Blake Co., by J. G. Blake, Treas.

Office of Dews Woolen Company.

Chas. A. Dews, Agent.
M. Hudson, Treas.
Jor. K. Edes, Pres.
D. R. Straw, Sec.

H. Hudson,
Geo. H. Dews,
J. Hudson,
Directors.

Mill at North Dexter.

GUILFORD, ME., *May* 20, 1904.

GENTLEMEN: Please find enclosed note and check for note due tomorrow, the 21st. I have given Henry the other settlement and will send to you.

Yours truly, HUDSON CLOTHING CO.

92 Henry Hudson, Pres. James Hudson, Treas. & Mgr.

Hudson Clothing Co., Dealers in Ready-Made Clothing and Gents' Furnishings, Hats, Caps, Boots and Shoes, Newbegin Block, Main Street.

GUILFORD, ME., *Sept.* 26, 1903.

GENTLEMEN: I was talking with Henry Hudson yesterday. He thought he had returned the notes, but find he mislaid them. If you will send new ones, I will see that they are promptly signed and endorsed and returned to you.

Yours truly, HUDSON CLOTHING CO.
J. H.

Henry Hudson, Pres. James Hudson, Treas. & Mgr.

Hudson Clothing Co., Dealers in Ready-Made Clothing and Gents' Furnishings, Hats, Caps, Boots and Shoes, Newbegin Block, Main Street.

GUILFORD, ME., *Mar.*, 1904.

GENTLEMAN: Please find enclosed check and note to pay note due today. Will see that it is fixed when due.

Yours truly, HUDSON CLOTHING CO.

Henry Hudson, Pres. James Hudson, Treas. & Mgr.

Hudson Clothing Co., Dealers in Ready-Made Clothing and Gents' Furnishings, Hats, Caps, Boots and Shoes, Newbegin Block, Main Street.

GUILFORD, ME., *Dec.* 26, 1903.

GENTLEMEN: Notice of your draft from the bank at hand. As I understand, the bill is not due until Jany. 1, and can fix it as soon as due.

Yours truly, HUDSON CLOTHING CO.

93 J. A. Rand, Clothing and Furnishings, Boots and Shoes.

The Shoe and Leather Exchange Agency, Inc.

JUN. 10, 1902.
Received.

GUILFORD, MAINE, *June* 7, 1902.

GENTLEMEN: Your letter at hand, and will say in answer that the Hudson Clothing Co. is being incorporated by Henry Hudson of Guilford, Miss M. A. Martin of Boston, and myself, capital $10,000, of which $6,000 is paid in.

Yours truly,

JAMES HUDSON, *Mgr.*

Successors to J. A. Rand.

Henry Hudson, Pres. James Hudson, Treas. & Mgr.

Hudson Clothing Co., Dealers in Ready-Made Clothing and Gents' Furnishings, Hats, Caps, Boots and Shoes, Newbegin Block, Main Street.

GUILFORD, ME., *June* 2, 1904.

GENTLEMEN: Please send us one white hat, child's stock, No. 295, size full 6½. Also if you have any canes send us down some to choose from. Send by return express.

Yours truly,

HUDSON CLOTHING CO.

Henry Hudson, Pres. James Hudson, Treas. & Mgr.

Hudson Clothing Co., Dealers in Ready-Made Clothing and Gents' Furnishings, Hats, Caps, Boots and Shoes, Newbegin Block, Main Street.

GUILFORD, ME., *Apr.* 3, 1903.

James A. Robinson & Son, Bangor, Me.

GENTLEMEN: Please find enclosed notes to bal a/c. Henry has sent on guarantee for goods. I suppose you have it by this time.

Yours truly,

HUDSON CLOTHING CO.

UNITED STATES OF AMERICA, *District of Maine:*

PORTLAND, *February* 19, 1906.

I, James E. Hewey, Clerk of the District Court of the United States for the District of Maine, hereby certify that the fore-
94 going annexed copies are true and correct copies of exhibits on file in Involuntary Bankruptcy case, No. 106, of said District Court, entitled

"THE HUDSON CLOTHING COMPANY, Robinson-Blake Company, a corporation organized by law and having an established place of business at Bangor, Penobscot County, Maine, and the J. M. Arnold Shoe Co., a corporation organized by law and having an established

place of business at said Bangor, and Fred S. Crosby and Charles Dwinel, both of said Bangor, copartners under the firm name and style of Crosby & Dwinel, petitioners against the Hudson Clothing Company, of Guilford, a copartnership consisting of Henry Hudson and James Hudson, both of Guilford, all in the County of Piscataquis and State of Maine,"

said exhibits having been used in hearing before said court, but not marked.

Witness my hand and the seal of said District Court this nineteenth day of February, A. D. 1906.

JAMES E. HEWEY, *Clerk.*

PETITIONER'S EXHIBIT 12.

[140 Fed. Rep. 49.]

In re HUDSON CLOTHING CO.

(District Court, D. Maine, August 18, 1905.)

No. 106.

1. BANKRUPTCY—GROUNDS FOR REHEARING—REVIVAL OF RIGHT OF APPEAL.—While a court of bankruptcy has the right to grant a rehearing after the time for an appeal from its order or decree has expired, for the purpose of reviving the right of appeal, it should not do so unless the facts in the case clearly warrant it, because otherwise the effect would be to nullify the statutory provision limiting the time within which an appeal may be taken.
2. SAME.—An adjudication of bankruptcy was made after a full hearing on oral testimony which was not taken down, although the court called the attention of counsel to the fact suggesting the necessity, in case either party should desire to appeal, and offered to suspend the hearing until a stenographer could be procured. No steps for an appeal were taken, but after the time for an appeal had expired a petition for a rehearing was filed. *Held*, that, where the court was of opinion that there was no ground for a rehearing on the merits, one would not be granted, for the purpose of giving the bankrupt the right to appeal.

In Bankruptcy.

On Petition for Rehearing in the Matter of Adjudication.

Manson & Coolidge and Henry Hudson, for petitioner for rehearing.

John S. Williams and Albert S. Woodman, for petitioning creditors.

HALE, *District Judge:*

In this matter there was a full hearing on June 13, 1905, upon the matter of adjudication. The question then before the
95 court was whether the alleged copartnership under the name of Hudson Clothing Company, should be adjudged bankrupt. Under this question there was a serious controversy of fact and of law. Much testimony was offered, and full oral arguments were made. During the progress of the testimony the court called the attention of counsel to the fact that there was no stenographer in court taking down the testimony of the witnesses. The court stated to counsel that while, for the purposes of the hearing, the court did not care for a stenographer, still counsel should be reminded that, if either side desired to appeal, it would be necessary to have the testimony taken down and the record preserved. The court further suggested that it would suspend, and allow a stenographer to come in and take down all the proceedings, if it was desired. Counsel took no action in that regard, so that the evidence was not preserved. While all the evidence was fresh in my mind I decided the case; and, on June 17, 1905, I ordered an adjudication in bankruptcy against the said copartnership. No appeal was taken within the 10 days mentioned in Bankr. Act July 1, 1898, c. 541, § 25*a*, 30 Stat. 553 [U. S. Comp. St. 1901, p. 3432]. On July 21st, however, a petition for a rehearing was filed by one of the alleged partners of the Hudson Clothing Company. Since that time the question of such rehearing has been fully heard by me upon arguments of counsel.

Undoubtedly the court has a right to grant the rehearing; but, upon a careful consideration of the testimony as it was presented and of the questions of law involved, I must decide that I see no reason for changing my decision in making the adjudication, and I see no reason to believe that further argument would lead me to reconsider.

It is undoubtedly true, also, that the court has a right to grant a rehearing for the purpose of allowing an appeal to be taken. This petition may fairly be held to present the question of a review. *In re Worcester County*, 102 Fed. 808, 42 C. C. A. 637, Judge Putnam, in speaking for the Circuit Court of Appeals, has said that it is of no consequence whether a petition is regarded by the court as a petition for a rehearing, or as a petition for review; that the court does not regard forms in this regard. *In re Wright* (D. C.) 96 Fed. 820, Judge Lowell did grant a rehearing for the purpose of allowing an appeal to be taken. Judge Lowell, in allowing the rehearing, said:

"To grant a rehearing upon the pretense of reconsidering the merits of the case, but really to revive the petitioner's right of appeal, would be the employment of an unworthy fiction."

He quotes from Mr. Justice Clifford in *Stickney v. Wilt*, 23 Wall. 150, 23 L. Ed. 50, and concludes:

"From this remark it seems to follow that the Supreme Court considered that the District Court would be justified in granting a review of its own decree for the purpose of allowing that decree to be ap-

pealed from, and although the application was presented after the time for appeal was expired."

96 Judge Lowell's action in that case was taken for the reason that from certain mishaps the party against whom the decision had been made had not taken the appeal within 10 days, but the court was satisfied that throughout the proceedings an appeal had been contemplated.

In the case at bar I had notified counsel for both parties during the hearing, as I have just stated, in order that they might protect their rights of appeal, and had called their attention to the fact that no appeal could probably avail unless the testimony were reduced to writing. No stenographer was brought into court, however, and afterwards no papers were filed with reference to an appeal; but this petition for a rehearing was filed on July 21, 1905.

A court must exercise a very guarded discretion in granting a rehearing. While it has a right to grant a review of its own decree, and a rehearing for the purpose of allowing that decree to be appealed from, it should never do this unless the facts in the case clearly warrant it, as they did in the case of *In re Wright*, to which I have referred. No such facts appear to me to exist in the case at bar. I cannot believe that by reason of any "series of mishaps" an appeal was not taken, for full notice was given to counsel, and I must assume that they acted advisedly in failing to preserve the record and to apply for an appeal. The court must take into consideration, too, that the petitioners are not the only parties whose rights may be affected by granting a rehearing for the purpose of allowing my decree to be appealed from. If I should grant this rehearing for this purpose, it might fairly be used as a precedent for such action in almost any case where a party had not taken an appeal from an adverse decree within the 10 days allowed by the bankruptcy statute. It would thus have the effect of nullifying the provisions of section 25*a*, allowing only 10 days for taking an appeal.

The petition for rehearing is denied.

PETITIONER'S EXHIBIT 13.

This Exhibit is a book containing numerous check stubs.
By Order of Court copies of the following, only, are included.

No. —.
Date, June 25, 1902.
C. W. Brown, $300, for Davis Bros.

No. —.
Date, July 2, 1902.
Brown Durrell, $100.

No. —.
Date, June 13, 1902.
Standard Clothing Co. to bal. a/c, $14.75.

97 PETITIONER'S EXHIBIT 14.

[Cover.]

Hudson Clothing Co.

The First National Bank, Guilford, Maine, in Account with James Hudson.

Always bring your Book with Deposits. See that the Entries agree with your Ticket.
Please leave your Book once a month for balancing.

The First National Bank in Account with James Hudson.

DR. Deposits.			CR. Checks.		
1902.				Checks returned.	
May 2	173	47	May 5	100	
13	165	97	8	2	62
June 4	1139	88	13	14	25
" 7	75		15	10	
			19	12	54
			28	38	95
			29	27	
			June 2	22	36
			4	22	50
				72	86
			7	15	
			10	33	85
				15	75
			13	28	90
			16	12	83
				14	75
			17	45	
			19	6	50
				200	
			20	58	30
			28	25	
				300	
				33	90
			30. Bal	441	46
	1554	32		1554	32

98

1902.		
June 30. Bal	441	46
July 5. Dep	118	58

Hudson Clothing Company.

1902.							
Sept.	11.	Dep.....	30 00		Checks as per list...	$475	97
	24	.....	21 00	Dec.	31. Balance.....	34	67
Nov.	10.....		84 50				
"	19.....		25 50				
	28..	.....	21 50				
Dec.	5.....		32 50				
	11.....		32 35				
	16.....		56 00				
	26.....		132 29				
	30.....		40 00				
Oct.	10.....		10 00				
	31.....	....	25 00				
			510 64			510	64
Dec.	31.	Balance.....	34 67		C'ks as per list.....	613	47
Jan.	3.	Dep..... ...	121 78	Ap'l	30. Balance.....	59	33
	19.....		40 00				
	22.....		10				
	29.....		12				
Feb.	27.....		35				
Mar.	27.....		134 35				
	28.....		10 00				
Ap'l	3.....		50 00				
"	6.....		113 00				
"	11.....		12 00				
"	27.....		15 00				
"	29.....		25 00				
"	30.....	.....	50 00				
Feb.	10.....		5 00				
Ap'l	25.....		5 00				
			672 80			672	80

99

1903.							
Ap'l	30.	Balance.....	$59 33				
May	4.	Dep.....	48 54	June	30. Cks. per list...	541	48
	8.	"	77 40				
	13.	"	25 00	"	" Bal.....	2	17
	15.....		18 00				
	22.....		63 66				
	25.....		42 50				
	27.....		30 50				
June	1.....		60 86				
	4.....	.....	65 00				
	17.....		6 28				
May	13	....	46 58				
			543 65			543	65

June	30.	Balance	2 17		Check as per list	258	75
July	2.	Dep	106 65				
	"	"	15 00	Sept.	30. Balance		77
	3.	"	20 00				
Aug.	31.	"	50				
Sep.	8.	"	5				
"	9.	"	20				
"	23.	"	15 70				
"	21.	"	5 00				
July	31.	"	20 00				
			259 52			259	52
Sept.	30.	Balance	77		Cks. as per list	407	95
Oct.	1		16 97	Nov.	30. Bal	85	46
	28		24 00				
	30		140 59				
Nov.	11		33 00				
	16		52 93				
	24		104 64				
	"		34 00				
	27		16 51				
	30		70 00				
			493 41			493	41

100

Nov.	30.	Balance	85 46				
Dec.	1.	Dep	100 00				
	2.	"	59 90		Cks. as per list	635	71
	14.	"	50 00				
	16.	"	44 45				
	28.	"	5 00				
	30		117 45				
	23		147 00				
	24		25 00				
12 /	31.	Overdrawn	1 45				
			635 71			635	71
				12 /	30. Overdrawn	1	45
Jan.	11.	Dep	24 67		Cks. as per list	824	94
	12.	"	40 50	3 /	31. Balance	14	65
	25.	"	28 00				
	30.	"	87 80				
Feb.	3.	"	41 16				
	15.	"	71 29				
	"	"	10 00				
	29.	"	69 50				

Mch. 2		79 14			
" 3		102 00			
" 14		37 78			
" 22		105 00			
" 30		109 20			
Jan. 19.	"	25 00			
Feb. 15.	"	10 00			
		841 04			841 04
Mch. 31.	To Balance	14 65	Apr. 30.	By Cks. as list	210 54
Apl. 7		8			45 99
14		15 90			
15		65			
16		32 98			
22		65 00			
28		25 00			
30		30 00			
		256 53			256 53

101

1904.					
Apr. 30.	To Balance	45 99	Checks		791 76
May 2.	Dep	57 80			
9.	"	45 25			
13.	"	36 00			
16.	"	55 90			
23.	"	112 50			
26.	"	87 97			
31.	"	25 00			
June 3.	"	28 15			
4.	"	20 00			
7.	"	74			
14.	"	84 65			
15.	"	15 00			
17.	"	12 50			
20.	"	34 00			
July 6.	"	18 65			
13.	"	35			
Sept. 1.	"	1 40			
July 7.	"	2			
		791 76			791 76

PETITIONER'S EXHIBIT 15.

This Exhibit is a book containing numerous check stubs and blank checks.

By Order of Court copies of following, only, are included.

No. 250.

Hudson Clothing Co.

GUILFORD, ME., —— —, 19—.

[State of Maine Seal.]

The First National Bank

Pay to the order of ———————————— $———

———————————————————— Dollars

—— ——, *Manager.*

Safe Deposit Vault Boxes to Rent.

$— 100
Date June 11,
Favor Robinson-Blake Co.
Account note
No. 238.

102 PETITIONER'S EXHIBIT 16.

[Copy.]

No. 106.

THE HUDSON CLOTHING COMPANY, ROBINSON-BLAKE COMPANY, a Corporation Organized by Law & Having an Established Place of Business at Bangor, Penobscot County, Maine, and the J. M. ARNOLD SHOE COMPANY, a Corporation Organized by Law and Having an Established Place of Business at said Bangor, and FRED. S. CROSBY and CHARLES DWINEL, Both of said Bangor, Copartners under Firm Name of and Style of Crosby & Dwinel, Petitioners,

against

THE HUDSON CLOTHING COMPANY OF GUILFORD, a Copartnership Consisting of Henry Hudson and James Hudson, Both of Guilford, all in the County of Piscataquis and State of Maine.

F. E. Guernsey for Trs. H. Hudson.

1904.

J. S. Williams Att'y (Guilford).

Oct. 22. Creditors' petition filed and $30.00 deposited (9.30 a. m.)
" 24. Ord. to show cause iss. (H. H.) ret. Nov. 5, 1904—10 a. m.
" " " " " " " (J. H.) " " " " "
" " Subpœna & dup. petitions delivered to Marshal.
" 26. Returned Executed.

Nov. 5. F. E. Guernsey (Dover) ent. app. for Henry Hudson.
" 9. Denial of bankruptcy filed by J. W. Manson and F. D. Dearth, Trustees estate Henry Hudson.
" 21. Answer of Henry Hudson filed.
" " " " James Hudson filed.
" 22. Further answer of trustees filed.
1905.
Jan. 24. Case to stand for hearing on question of adj. on pet. and answers of James & Henry Hudson.
May 24. Case set down for hearing June 2, 1905, 10 A. M.—Hearing June 13, 1905—Hale, J.
June 17. Hale, J. Hudson Clothing Co. adj. bankrupt. Referred to Sprague Ref.
Juiy 12. Schedules filed.
" 21. Petition for rehearing filed.
" 26. Service on pet. for rehearing acknowledged and case set for hearing Aug. 8, 1905, 10 A. M.
Aug. 8. Mo. to amend record filed by Peti. creditors.
" " Hearing on petition for rehearing.
" 18. Extension of record ordered, in pursuance of pet. for amend. filed Aug. 8, 1905.
" " Pet. for rehearing denied—Opinion filed.
Sept. 19. Bond of Trustee, John S. Williams of Guilford, and approval filed.

103. PETITIONER'S EXHIBIT 16 (A).

To the Honorable Clarence Hale, Judge of the District Court of the United States of America, for the District of Maine:

The Petition of the Robinson-Blake Company, a corporation organized by law and having an established place of business at Bangor, in the County of Penobscot, State of Maine, and the J. M. Arnold Shoe Company, a corporation organized by law and having an established place of business at said Bangor, and Fred S. Crosby and Charles Dwinel both of said Bangor, copartners under firm name and style of Crosby & Dwinel, and respectfully show—That the Hudson Clothing Company of Guilford, in the County of Piscataquis said State, is a copartnership, consisting of Henry Hudson and James Hudson, both of said Guilford, and both residents thereof for more than six months immediately preceding the date of this petition, and the date of filing of this petition, copartners under firm name and style of the Hudson Clothing Company; that said firm has for the greater portion of six months immediately preceding the date of this petition and the date of filing of this petition, had its principal place of business at said Guilford, said State and District, and that the occupation of said firm is that of merchants or traders, and is insolvent, and the said Henry Hudson and James Hudson is neither a wage-earner, nor a person engaged principally in farming or the tillage of the soil; that your Petitioners are creditors of the said Hudson Clothing Company, having provable claims against them,

which amount in the aggregate, in excess of the value of securities held by them, to $1000.00 and over, and that neither of your Petitioners is entitled to priority of payment on their said claims within the meaning of section 64-*b* of the Bankruptcy Law of 1898, nor has either of your Petitioners received any preference within the meaning of section 60-*a-b* of such law as amended; that the net amount of your Petitioners' claims and the securities held by them, if any, are as follows, and all of which are unsecured, to wit:—

Robinson-Blake Company,

notes and account for merchandise sold and delivered by them to the Hudson Clothing Company in 1903-1904.. $1190.55

J. M. Arnold Shoe Co.,

notes and account for merchandise sold and delivered by them to Hudson Clothing Company in 1903-1904.... 540.02

Crosby & Dwinel,

note & account for merchandise sold and delivered by them to Hudson Clothing Co., in 1903-1904..... 135.20

And your Petitioners further represent that the said Hudson Clothing Co., copartnership is insolvent and has been insol-
104 vent during all the four months immediately preceding the filing of this petition, and the date of this petition, and that within four months next preceding the date of this petition, the said Hudson Clothing Company, by its partners aforesaid, committed divers acts of bankruptcy as follows, viz,—

(1) The said James Hudson, copartners as aforesaid, on the 2nd day of July A. D. 1904, was adjudicated a bankrupt by this Honorable Court upon his voluntary petition by him signed; and the said Henry Hudson copartner as aforesaid, on the 8th day of August A. D. 1904, was duly adjudged a bankrupt by this Honorable Court, upon his voluntary petition by him signed, and the said Henry Hudson did in his schedule of assets in said petition include all the property, stock-in-trade, and assets of the said Hudson Clothing Company as his sole property and the same was taken possession of and appraised by the appraisers and Trustees of said Henry Hudson's estate as a part thereof; and the said store containing said property and goods of said company was closed, and the possession thereof with all the contents therein taken by said Trustees; and the said Hudson Clothing Co. has refused to pay the debts of said firm; and said James Hudson testified in his examination in Bankruptcy that said stock-in-trade was the property of said Henry Hudson, and he also delivered the possession of said property to said Henry Hudson and his agents;—thus by their acts the said property of said Company was, by its copartners, conveyed, concealed, transferred, and removed from the Creditors thereof, with intent to hinder and de-

lay the Creditors of said Company; and also in that said copartnership of Hudson Clothing Company, since the first day of July, A. D. 1904, and about said date being then indebted to all of said petitioning Creditors as aforesaid, and to divers other parties, did, with intent to hinder, delay, or defraud the creditors of said copartnership, make a transfer and conveyance to the said Henry Hudson of a portion of the property then owned by said copartnership, to wit, the stock of clothing, men's furnishing goods, hats, caps, boots, shoes, rubber goods, and other goods, wares, and merchandise then in store in said Guilford occupied by said copartnership.

(2) Also, in that, by their individual petitions in bankruptcy as aforesaid, the members of said firm admitted their inability in writing to pay the debts of said Company, and willingness that said Company be adjudged bankrupt.

(3) Also, in that the said Hudson Clothing Company committed an act of bankruptcy in that heretofore, to wit, on the — day of June A. D. 1904, said date being within four months prior to the date of this petition, or to the filing of this petition, said copartnership being then insolvent, and being then indebted to said Petitioners who were unsecured creditors, and being indebted to B. C. Dinsmore & Co., of Belfast, Maine, who was then and there a
105 creditor of the same class as the petitioning creditors, and being then indebted to divers other creditors of the same class, said copartnership did, with the intent to prefer over other creditors of said copartnership, make a transfer to the said Dinsmore & Co. of a portion of the property of said copartnership by paying the sum of — dollars in payment of indebtedness of said copartnership to the said Dinsmore & Co.

And the said Hudson Clothing Company did also prefer other creditors and commit divers other acts of bankruptcy in that divers preferences were made to divers other creditors unknown to your Petitioners, in the four months next preceding the date of this petition and the date of filing of this petition, and while said firm were insolvent; and also in that the said assets of said firm were transferred to the said Henry Hudson and his estate as set out above within the four months next preceding this petition and the date of filing this petition thus constituting a preference and being an act of bankruptcy under the law.

Wherefore your Petitioners pray that service of this petition with a subpœna may be made on Henry Hudson and James Hudson as provided in the acts of Congress relating to Bankruptcy, and that the said Hudson Clothing Company may be adjudged by this Court to be bankrupt within the purview of said acts.

ROBINSON-BLAKE COMPANY,
By J. G. BLAKE, *Treas'r.*
J. M. ARNOLD SHOE CO.,
By HERBERT A. ARNOLD, *Treas.*
CROSBY & DWINEL,
By FRANK DWINEL.

898

UNITED STATES OF AMERICA,
District of Maine, County of Penobscot, ss:

I, Joseph G. Blake, make an oath that I am Treasurer of Robinson-Blake Company, petitioning Creditors above-named, and for and in behalf of said Corporation make solemn oath that the statements contained in the foregoing petition, subscribed by said Corporation, by me as Treasurer, are true to the best of my knowledge and belief.

[L. S.] JOSEPH G. BLAKE, *Treas'r.*

Subscribed and sworn to before me this 3rd day of October, A. D. 1904.

[L. S.] HOWARD M. COOK,
Notary Public.

UNITED STATES OF AMERICA,
District of Maine, County of Penobscot, ss:

I, Herbert A. Arnold, make oath that I am Treasurer of J. M. Arnold Shoe Company, petitioning creditors, above-named
106 and for and in behalf of said Corporation, make solemn oath that the statements contained in the foregoing petition, subscribed by said Corporation, by me as Treasurer, are true to the best of my knowledge and belief.

[L. S.] HERBERT A. ARNOLD,
Treasurer.

Subscribed and sworn to before me this 11th day of October, A. D. 1904.

B. C. ADDITON, [L. S.]
Notary Public.

UNITED STATES OF AMERICA,
District of Maine, County of Penobscot, ss:

I, Frank Dwinel, make oath that I am — member of the firm of Crosby & Dwinel petitioning Creditors above-named, and for and in behalf of said firm make solemn oath that the statements contained in the foregoing petition subscribed by said firm are true to the best of my knowledge and belief.

FRANK DWINEL.

Subscribed and sworn to before me this 11th day of October, A. D. 1904.

[L. S.] HOWARD M. COOK,
Notary Public.

UNITED STATES OF AMERICA,
District of Maine, ss:

I, E. M. Russell, Deputy Clerk of the District Court of the United States for the District of Maine, hereby certify that the foregoing is a true copy of the Creditors' Petition against Hudson Clothing Company, on file in this office.

Witness my hand and the seal of said District Court this twenty-seventh day of June, A. D. 1906.

[L. S.] E. M. RUSSELL,
Deputy Clerk.

PETITIONER'S EXHIBIT 17.

Adjudication of Bankruptcy.

In the District Court of the United States for the District of Maine.
In Bankruptcy.

In the Matter of THE HUDSON CLOTHING COMPANY, the Copartners in Which are Henry Hudson and James Hudson, Bankrupt.

At Portland, in said District, on the 17th day of June, A. D. 1905, before the Honorable Clarence Hale, Judge of said Court in
107 bankruptcy, the petition of Robinson-Blake Co., J. M. Arnold Shoe Co., and Crosby & Dwinel, that the partnership of Hudson Clothing Co., the copartners in which are Henry Hudson and James Hudson be adjudged bankrupt, within the true intent and meaning of the acts of Congress relating to bankruptcy, having been heard and duly considered, the said partnership is hereby declared and adjudged a bankrupt accordingly.

Witness, the Honorable Clarence Hale, Judge of the said Court, and the seal thereof, at Portland, in said District, on the 17th day of June, A. D. 1905.

[L. S.] JAMES E. HEWEY, *Clerk.*

C. H.

United States District Court, District of Maine. In Bankruptcy.

I, E. M. Russell, Deputy Clerk of the District Court of the United States for the District of Maine, hereby certify that the foregoing is a true copy of Adjudication of Bankruptcy of Hudson Clothing Company, on file in this office.

Witness my hand and the seal of said District Court this twenty-seventh day of June, A. D. 1906.

[L. S.] E. M. RUSSELL,
Deputy Clerk.

PETITIONER'S EXHIBIT 18.

J. A. Rand, Clothing and Furnishings, Boots and Shoes.

GUILFORD, MAINE, *June* 7, 1902.

GENTLEMEN: Your letter at hand and will say in answer that the Hudson Clothing Co. is being incorporated by Henry Hudson, of

Guilford, Miss M. A. Martin, of Boston and myself. Capital $10,000 of which $6000 is paid in.

Yours truly, JAMES HUDSON, *Mgr.*

Successor to J. A. Rand.

A true copy:
Attest: [L. S.] E. M. RUSSELL,
Deputy Clerk.

108 PETITIONER'S EXHIBIT 19.

Having Bought the J. A. RAND Stock
We are Prepared to Sell You
READY-MADE CLOTHING
At Prices That Can't But Help to Please You.
We also have the Largest and Finest Line of
FURNISHINGS ever shown in town.
Men's and Boys' highest grade of
SHOES
In Patent, Dongolas and Velours.
Straw Hats at your own price.
Come and see us. We will be glad to see you all.

HUDSON CLOTHING COMPANY.

PETITIONER'S EXHIBIT 20.

Look for the "Spot" to Find a Special Shirt Sale.

We find we have double the Summer Shirts we ought at this season on account of the wet and cold weather. We are making a special price of 49c. on our 75c. Shirts, sizes 15½ and 16. Our line of $1.00 Shirts, all sizes, at 7–c.

Our line of broken sizes, collars and cuffs attached, at 19c. Regular goods in all colors with two collars and a pair of cuffs, at 50c. Underwear and furnishings at rock bottom prices.

CLOTHING.

Don't think but what we have as fine a line of Men's, Boys' and Children's Suits, Boots and Shoes, Hats and Caps, as can be found and of the best quality and style, which will be sold as cheap as can be bought in the county.

Come in and see us, and see what you can do before purchasing elsewhere.

HUDSON CLOTHING CO.
J. HUDSON, *Manager.*

H. HUDSON, *Pres.*

Guilford, June 30, 1902.

109 PETITIONER'S EXHIBIT 21.

We are not advertising something for nothing, but good values and good money's worth in Genuine Bargains at a

25% DISCOUNT

ON ALL

Men's, Boys' and Youths' Heavy Winter Suits, Fur Coats, Mackanaws, Frocks and Hats.

Fur Coats, $12.50 to $20. Former Price, $16 to $28.

And we are going to sell them. We also have a full line of Furnishings, Men's Rubbers and Moccasins, Overshoes.

HUDSON CLOTHING CO.

PETITIONER'S EXHIBIT 22.

WE HAVE THE GOODS,
YOU HAVE THE CASH.

We can trade with you as we have as nice a line of CLOTHING to choose from as ever was in town.

Top Coats, Box Patterns,

Rain Coats, $13.50 for $10.00.

Everything new and up-to-date.

Boots and Shoes, Hats and Caps.

Fancy Shirts and Stockings,
And Furnishings of all Kinds.

We have some 32, 33, 34 and 35 Suits, will sell at $2.50 to $4.00 a Suit.

HUDSON CLOTHING CO.

PETITIONER'S EXHIBIT 23.

Henry Hudson, President. James Hudson, Treas. and Mgr.

HUDSON CLOTHING CO.,

Dealers in

Ready-Made Clothing and Gents' Furnishings,
Hats, Caps, Boots and Shoes.
Newbegin Block, Maine Street, Guilford, Maine.

FREE!

We are offering for the coming year the greatest inducements for You to trade at our store.

We propose to give, Free of Cost to our Customers, the finest line of premiums ever seen in our town.

110 You will notice that our list includes articles that will beautify your home, and that you would have to pay a large amount for elsewhere.

We shall continue to sell our goods at low prices, and simply

take this method of advertising our business because of the benefit to our customers.

You can have your choice of any one of the following articles when your purchases at our store shall amount to $50.00.

Ask for a card to-day.

Book Rack	Folding Work Table	1-2 Doz. Rogers' Knives
China Clock	Polished Oak Rocker	" " " Forks
Smyrna Rug	Large Wood Mantle Clock	" " " Table Spoons
Parlor Lamp	Ladies' Upholstered Rocker	1-2 Doz. Rogers' Dessert Spoons
Bamboo Easel	Ladies' Willow Rocker	1 Doz. Rogers' Tea Spoons
Center Table	Silver Tea Urn	Carving Knife and Fork
Guilt Alarm Clock	" Sugar Bowl	Silver Mounted Tankard
Picture and Frame	" Butter Dish	Silver Mounted Cracker Jar
Oak Dining Chair	" Spoon Holder	Five Piece Toilet Set
Art Square	" Cream Pitcher	French Mirror and Frame
Pair Lace Curtains	" Cake Basket	
Thirty-five Piece Set Dishes		

HUDSON CLOTHING CO.,
Guilford, Maine.

PETITIONER'S EXHIBIT 24.

In the District Court of the United States for the District of Maine.
In Bankruptcy.

In the Matter of HENRY HUDSON and JAMES HUDSON, Copartners under the Firm Name of Hudson Clothing Company, Bankrupts.

I certify that the following is a true copy of so much of my records in the above-entitled matter as refers to the appointment and qualifications of the trustee herein.

1905.

September 12. "I was present at the time and place fixed by said adjournment, and ready to attend to the business of the meeting.

John S. Williams, of Guilford, in said District,

111 was appointed trustee and the penal sum of the bond was fixed at $500.00.

September 18 Trustee's bond, with Robinson-Blake Co., and J. M. Arnold Shoe Company, sureties, filed and approved. Trustee's bond with order approving of same transmitted to the District Court.

Copy of order transmitted to the Trustee."

JOHN F. SPRAGUE,
Referee in Bankruptcy.

Monson, Maine, July 5, 1906.

PETITIONER'S EXHIBIT 25.

Henry Hudson, Notary Public. James H. Hudson.

Hudson & Hudson, Attorneys and Counsellors at Law.

GUILFORD, MAINE, *April* 9, 1904.

I, Henry Hudson, hereby agree to and with Wm. M. Prince & Co. that the Hudson Clothing Co. shall pay promptly all bills of goods purchased from them at maturity up to the amount for which I do herein guarantee and I do hereby guarantee the payment of all bills for goods purchased from Wm. M. Prince & Co. up to the amount of five hundred dollars at any one time meaning that I will be holden at all times up to the sum of $500.

HENRY HUDSON.

RESPONDENTS' EXHIBITS.

RESPONDENTS' EXHIBIT 1.

Wm. N. Prince & Co., Jobbers of Fancy Goods, Small Wares, and Gents' Furnishings, 127 and 129 Middle Street.

PORTLAND, ME., *Aug.* 17, 1902.

Henry Hudson, Esq.

DEAR SIR: We have just received an order from the Hudson Clothing Co. amounting to ninety odd dollars; but have been informed by the Mercantile Agency that there is no such corporation formed as yet. They also tell me that you probably own the entire stock.

Now, if you are the owner and will advise us who to charge the goods to and say that you will become responsible for the bill we shall have no hesitancy whatever in filling the order for we
112 think that you are perfectly responsible without *any question* whatever. Kindly advise us by return mail and oblige.

Yours truly, WM. N. PRINCE & CO.

RESPONDENTS' EXHIBIT 2.

[Same Heading as Exhibit 1.]

PORTLAND, ME., *Sept.* 2, 1902.

Henry Hudson, Esq.

DEAR SIR: Kindly favor us with a reply to our letter of Aug. 17th inquiring about the Hudson Clothing Co. The goods were ordered for immediate delivery and consisted of a staple line of merchandise.

Awaiting your reply, we are

Yours truly, WM. N. PRINCE & CO.

RESPONDENTS' EXHIBIT 3.

[Same Heading as Exhibit 1.]

PORTLAND, ME., *M'ch 27th*, 1903.

Hudson Clothing Co.

GENTLEMEN: We have yours of yesterday saying that there is no trouble about Henry Hudson guaranteeing all bills that are bought or contracted for. In reply will say that if you will have him write us to that effect so that we may have a written guarantee from him we will fill and ship your order, otherwise we shall feel obliged to cancel same. Awaiting your answer, we are

Yours truly, WM. N. PRINCE & CO.

RESPONDENTS' EXHIBIT 4.

[Same Heading as Exhibit 1.]

PORTLAND, ME., *April 9th*, 1903.

Hudson Clothing Co.

GENTLEMEN: We wrote you March 27th asking you to have Henry Hudson send us a guarantee or write us that he would be responsible for the account of the Hudson Clothing Co., but as yet have received no reply. We have had your spring order laid out for some time. Among them are several desirable lots of goods which we are short of and if you do not want the goods we need them to apply on orders taken since yours was given.

113

Kindly advise us by return mail so that we may know what to do and oblige.

Yours truly, WM. N. PRINCE & CO.

RESPONDENTS' EXHIBIT 5.

[Same Heading as Exhibit 1.]

PORTLAND, ME., *April 14th*, 1903.

Henry Hudson, Esq.

DEAR SIR: We have a spring order for the Hudson Clothing Co. which they are much in want of but as we wrote them we must have a guarantee from you for same as well as present account and orders placed for fall. Kindly furnish us same by return mail as they are anxious for the goods.

Awaiting your reply, we are,

Yours truly, WM. N. PRINCE & CO.

RESPONDENTS' EXHIBIT 6.

[Same Heading as Exhibit 1.]

PORTLAND, ME., *April* 21, 1903.

Hudson Clothing Co.

GENTLEMEN: Kindly advise us by *return mail* regarding guarantee of Henry Hudson. We have written him but received no reply. Your order as we wrote you sometime ago, was laid out, and we need many of the goods for orders taken since, and we must know at once whether the matter is to be arranged or not.

Let us hear from you by return mail & oblige,

Yours truly, WM. N. PRINCE & CO.

RESPONDENTS' EXHIBIT 7.

[Same Heading as Exhibit 1.]

PORTLAND, ME., *April 5th*, 1904.

Henry Hudson, Esq.

DEAR SIR: We enclose a letter just received from your brother. Now if you will give us a written guarantee that all bills will be paid promptly in 60 days we will allow our man to come to Guilford and sell your brother what furnishing goods he may need. Our
114 business relations with him in the past have been so unsatisfactory, that if we do open the account again, we want to have positive assurance that bills will be settled as agreed. Awaiting your reply, we are

Yours truly, WM. N. PRINCE & CO.

RESPONDENTS' EXHIBIT 8.

A. B. Kirschbaum & Co., Philadelphia.

SEPTEMBER 15, 1903.

Mr. Henry Hudson, Guilford, Me.

DEAR SIR: We are in receipt of your favor of the 14th inst. enclosing us the signed guarantee for the account of the Hudson Clothing Co. We had quite a bunch of their stuff ready for shipment and have been awaiting the signature of the guarantee. The goods go forward to-day and we trust that they will arrive in due season and open up to their entire satisfaction.

Thanking you for your prompt attention and trusting that you may have a successful Fall season, we remain, with kindest regards,

Very truly yours, A. B. KIRSCHBAUM & CO.

E. P. S.

RESPONDENTS' EXHIBIT 9.

A. B. Kirschbaum & Co.

PHILADELPHIA, *January* 21, 1904.

Mr. Henry Hudson, Guilford, Me.

DEAR SIR: Last season you were kind enough to guarantee for us an account of $400.00 for the Hudson Clothing Co., of Guilford, Me. We shipped the merchandise in the Fall of 1903 and according to terms the same will not be due before February 1st. Of course we expect that they will pay the account in the regular way by that time and it is not so much this account we are writing you about, but we have a new order for Spring amounting to nearly $500.00 which we have not yet taken up for shipment, although if the goods are to be shipped in time for early Spring trade they will have to be manufactured immediately.

What we desire is to get a guarantee from you for this Spring account so that we can go ahead and manufacture the goods.

We enclose you herewith a blank filled out for the purpose
115 which we would kindly ask you to sign and return to us promptly so that there will be no time lost in preparing the goods for shipment.

Very respectfully yours, A. B. KIRSCHBAUM & CO.

E. P. S. (S)

RESPONDENTS' EXHIBIT 10.

For and in consideration of the sum of one dollar to the subscriber in hand paid by A. B. Kirschbaum & Co., the receipt whereof is acknowledged and for the further consideration that the said A. B. Kirschbaum & Co., sell and deliver unto the Hudson Clothing Company, Guilford, Maine, Goods, Wares and Merchandise on credit, on and after the date hereof, do hereby guarantee payment unto the said A. B. Kirchbaum & Co., for all Goods, Wares and Merchandise so sold and delivered from time to time and for any balance or balances of account for such Goods, Wares and Merchandise so sold and delivered and for interest on such accounts or sales at the rate of 6% per annum after maturity.

This guarantee shall extend to all sales of Goods, Wares and Merchandise made on and after this date by the said A. D. Kirschbaum & Co., to the said Hudson Clothing Co., Guilford, Maine, and shall continue until notice of its discontinuation as to further liability herein is given by the subscriber in writing to the said A. B. Kirschbaum & Co., but the liability of the subscriber upon this guarantee shall not exceed the sum of $500.00 and we do also waive notice of purchase and maturity of bills.

(Signed) ——— ———.
(Signed) ——— ———.

Dated January 21st, 1904.
Place ———.

RESPONDENTS' EXHIBIT 11.

A. B. Kirschbaum & Co.

PHILADELPHIA, *February* 8, 1904.

Mr. Henry Hudson, Guilford, Me.

DEAR SIR: There is still due us on the account of the Hudson Clo. Co. the amount of $391.40, which was due on February first. We gave them our very best terms of December first, 7/10 with the privilege of 5/60, which is the longest we sell our goods on, viz: 60 days from dating, and our moneys should have been here on the first day of February.

116 We would kindly ask you to either arrange with them to have them send us this money, or if you will send us your check in payment we will allow you 5% if we receive the same by return mail. Kindly let us hear from you and oblige.

Very truly yours, A. B. KIRSCHBAUM & CO.

E. P. S.

RESPONDENTS' EXHIBIT 12.

A. B. Kirchbaum & Co.

PHILADELPHIA, *March* 3, 1904.

Hudson Clo. Co., Guilford, Me.

DEAR SIRS: We are in receipt of your letter of recent date, stating that Henry Hudson would give our account his attention upon his return. We have made a record of the same and shall look for his remittance at the time specified.

We wrote you some time ago in reference to your Spring order which you selected from our Mr. Staples, amounting to about $500. We requested you to get Mr. Hudson's guarantee on this so that we could prepare the goods for shipment. You have not yet replied to our letter, and as we are anxious to get your goods under way and ready for shipment, as you no doubt will want them pretty soon, we would kindly ask you to give our letter the attention that it deserves and let us hear from you with the guarantee by return mail.

Awaiting the favor of a prompt reply, we remain,

Very truly yours, A. B. KIRSCHBAUM & CO.

E. P. S.

RESPONDENTS' EXHIBIT 13.

A. B. Kirschbaum & Co.

PHILADELPHIA, *March* 29, 1904.

Mr. Henry Hudson, Guilford, Me.

DEAR SIR: We are in receipt of your favor of the 18th instant and note contents.

We regret that the Hudson Clothing Co. have not been able to pay their bill before now as they will lose their discount, which is quite an item in the clothing business. We never sell goods on longer time than 60 days, as a rule, and naturally expect our money about February first, or March first at the latest. Still, as stated in your letter, if you will send us your check for the amount on
117 the 15th proximo, the same will be entirely satisfactory to us, and, on the strength of your guarantee, we will also ship them their Spring goods amounting to $500, which is also against our rules, as we never ship one season's goods before the previous season's has been paid for. We have your regular guarantee for the Fall account and enclose you herewith a new one for the Spring 1904 account, which kindly return to us promptly and the goods will be forwarded without further delay.

Thanking you for your kind attention, and hoping to hear from you promptly, we remain, with kindest regards,

Very truly yours, A. B. KIRSCHBAUM & CO.

E. P. S.

RESPONDENTS' EXHIBIT 14.

A. B. Kirschbaum & Co.

PHILADELPHIA, *April* 4, 1904.

Mr. Henry Hudson, Guilford, Maine.

DEAR SIR: We are in receipt of your favor dated April first with the guarantee signed for the Hudson Clothing Co. We shipped their goods today according to your instructions, and have also made a record that you will send us a remittance for their Fall account on April 15th. We hope to hear from you on that date, and thanking you for your kind attention, we remain,

Very truly yours, A. B. KIRSCHBAUM & CO.

E. P. S.

RESPONDENTS' EXHIBIT 15.

J. M. Arnold Shoe Co., Jobbers of Boots and Shoes, 170 Exchange St.

BANGOR, ME., *April* 4, 1904.

Henry Hudson, Esq., Guilford, Me.

DEAR SIR: Your guarantee dated April 2nd, 1904 for goods that the Hudson Clothing Co. may buy or have bought is received, and the same *excepted*. They owe us on open account bought in January, February and Mar. on 60 days' time $216.33, and a bill of goods amounting to $121.56 shipped them this day on 60 days time.

Very truly yours, J. M. ARNOLD SHOE CO.

118 RESPONDENTS' EXHIBIT 16.

[Same Heading as Exhibit 15.]

BANGOR, ME., *April* 9, 1904.

Henry Hudson, Esq., Guilford, Maine.

DEAR SIR: We have shipped to the Hudson Clo. Co. of Guilford, Me. under date of April 9th, 1904, merchandise to the amount of $2.67 on 60 Days' time.

Very truly yours, J. M. ARNOLD SHOE CO.

RESPONDENTS' EXHIBIT 17.

[Same Heading as Exhibit 15.]

BANGOR, ME., *April* 26, 1904.

Henry Hudson, Esq., Guilford, Maine.

DEAR SIR: We have shipped to the Hudson Clo. Co., of Guilford, Me., under date of April 26th, 1904, merchandise to the amount of $65.00 on 60 days' time.

Very truly yours J. M. ARNOLD SHOE CO.

RESPONDENTS' EXHIBIT 18.

[Same Heading as Exhibit 15.]

BANGOR, ME., *April* 30, 1904.

Henry Hudson, Esq., Guilford, Maine.

DEAR SIR: We have shipped to the Hudson Clothing Co., of Guilford, Me., under date of April 30, 1904, merchandise to the amount of $93.15 on 60 days' time on leather goods, and $11.72 due November 1st, net thirty days.

Very truly yours, J. M. ARNOLD SHOE CO.

119 RESPONDENTS' EXHIBIT 19.

[Same Heading as Exhibit 15.]

BANGOR, ME., *May 3rd,* 1904.

Henry Hudson, Esq., Guilford, Maine.

DEAR SIR: We have shipped to the Hudson Clothing Co., of Guilford, Me., under date of May 3rd, 1904, merchandise to the amount of $43.00 on 60 days' time.

Yours truly, J. M. ARNOLD SHOE CO.

RESPONDENTS' EXHIBIT 20.

[Same Heading as Exhibit 15.]

BANGOR, ME., *May* 21, 1904.

Henry Hudson, Esq., Guilford, Maine.

DEAR SIR: We have notes of the Hudson Clo. Co. endorsed by you which have been protested for nonpayment as follows: One of $100. due March 27th with an endorsement of $60., another due May 15th $116.96. Protest fees and interest to be added. We thought best to advise you about these matters, and we would like a cheque for the amount of both notes.

Very truly yours, J. M. ARNOLD SHOE CO.

RESPONDENTS' EXHIBIT 21.

Tremont Rubber Co.

BOSTON, *May 7,* 1904.

Mr. Henry Hudson, Guilford, Me.

DEAR SIR: We beg to inform you that your note endorsed to the Hudson Clothing Co. Feb. 2nd, 1903 has gone to protest. We would request that you instruct us for what reason you have not taken this note, and also that you attend to the same at once.

Trusting to receive a prompt reply from you with reference to this, we beg to remain,

Yours truly, TREMONT RUBBER CO.
E. B. PEARSON, *Treas.*

120 RESPONDENTS' EXHIBIT 22.

The Joseph Banigan Rubber Company.

BOSTON, MASS., *March* 16, 1904.

Mr. Henry Hudson, Guilford, Me.

DEAR SIR: After a short absence from the City I find upon my return an order given our Representative Mr. Steward for some

Banigan and Woonasquatucket Rubber Footwear to be shipped to the Hudson Clothing Co. I understand that the Hudson Clothing Co. is owned by your Brother, Mr. James Hudson, and that you sometimes assist Mr. James Hudson in his business affairs.

As this is a new account with us, we write asking if we ship the goods, will you see that your account is paid promptly when due. This may seem like rather a strange request to make, but we feel justified in writing as we do, because of certain information we have in regard to overdue accounts of the Hudson Clothing Co.

Thanking you in advance for your kindness and awaiting your reply, we remain,

Yours truly,

THE JOSEPH BANIGAN RUBBER CO.
C. L. WEAVER, *Selling Agent.*

RESPONDENTS' EXHIBIT 23.

Banigan Rubber Company.

BOSTON, MASS., *June* 29, 1904.

Mr. Henry Hudson, Guilford, Maine.

DEAR SIR: The Hudson Clothing Co., of Guilford, Me., are owing us $52.01 which is now some time past due. As you guaranteed this account, we write you asking if you cannot stir the Hudson Clothing Co. up a little and get them to send us a check, and oblige,

Yours truly,

BANIGAN RUBBER COMPANY.
C. L. WEAVER, *President.*

121 RESPONDENTS' EXHIBIT 24.

Byron Greenough & Co.

PORTLAND, ME., *Oct.* 21, 1903.

Mr. Henry Hudson.

DEAR SIR: We are shipping the Hudson Clothing Co. to-day a bill of Caps and Coats amounting to $193.00. Please send us guarantee for same and greatly oblige.

Yours resp'y, BYRON GREENOUGH & CO.

RESPONDENTS' EXHIBIT 25.

James A. Robinson & Son.

BANGOR, ME., *Apr.* 24, 1903.

Hudson Clothing Co., Guilford, Maine.

GENTLEMEN: Replying to yours of the 3d we would say that Mr. Henry Hudson has not as yet sent the guarantee for the goods. As soon as we receive it we shall be happy to forward your order.

Yours very truly,

ROBINSON-BLAKE COMPANY.

Dict. J. G. B.

We received the notes properly endorsed which balanced the old account.

RESPONDENTS' EXHIBIT 26.

James A. Robinson & Son.

BANGOR, ME., *Mar.* 25, 1903.

Hudson Clothing Co., Guilford, Maine.

GENTLEMEN: Replying to yours of March 21 we have delayed shipping your goods ordered of Mr. Williams some days since as we learn that your company has not been fully organized, and also because you have not sent us the notes in settlement of our account rendered with Henry Hudson's endorsement as agreed. Upon receipt of the notes with his endorsement we shall be pleased to ship the goods.

Yours very truly,

ROBINSON-BLAKE COMPANY.

Dict.

122 RESPONDENTS' EXHIBIT 27.

James A. Robinson & Son.

BANGOR, ME., *May* 15, 1903.

Mr. Henry Hudson, Guilford, Me.

DEAR SIR: We had your agreement by telephone to guarantee the account of the Hudson Clothing Co. to the amount of $200.00. They now owe us $258.00, and we have another order for about $75.00 more. Only a small portion of the goods sold him are now due. If we fill this extra order will you guarantee it? An early reply will greatly oblige,

Yours very truly,

ROBINSON-BLAKE COMPANY.

Dict. J. G. B.

Order of Court as to Record.

[Filed December 7, 1906.]

United States District Court, District of Maine. In Bankruptcy.

JOHN S. WILLIAMS, Trustee in Bankruptcy of the Estate of Hudson Clothing Company, Petitioner,

v.

JOHN W. MANSON, ALBERT W. CHAPIN, and FREEMAN D. DEARTH, Trustees in Bankruptcy of the Estate of Henry Hudson.

Whereas John W. Manson, Albert W. Chapin and Freeman D. Dearth, trustees in bankruptcy of the estate of Henry Hudson, appellants in the above-entitled case, have filed in this court a præcipe, addressed to the clerk of this court, wherein he is requested to take an abstract of record to be filed in the United States Circuit Court of Appeals for the First Circuit, pursuant to an appeal allowed in the above-entitled case, and wherein they have requested the clerk to include in such transcript of record divers papers and exhibits specifically mentioned in said præcipe, and to include in such transcript of record no other papers or exhibits, and whereas said John S. Williams, trustee in bankruptcy of the estate of Hudson Clothing Company, appellee in the above-entitled case, has filed in this court a petition addressed to the clerk, wherein he has requested the clerk to include in said transcript of record divers other papers and exhibits therein specifically mentioned, and whereas after the filing of said præcipe by the appellants and said petition by
123 the appellee the clerk has made request to this court for instructions in connection therewith.

Now, after full consideration, it is ordered that the clerk include in said transcript of record copies of all of the papers and exhibits which are referred to either in said præcipe filed by said appellants, or in said petition filed by the appellee, excepting only copies of Exhibits 13 and 15, which are referred to in paragraph C in said petition filed by the appellee.

And whereas said Exhibit 13 is a check stub book containing numerous check stubs, and it appears that said appellants make no claim that it is material to include in the transcript of the record any portions of either of said Exhibits 13 or 15, and it also appears that said appellee does not claim that it is material to include in the transcript of the record copies of all of the contents of said Exhibits 13 and 15.

And whereas said Exhibit 15 is a check book containing numerous blank checks and numerous check stubs, and it appears that said appellants make no claim that it is material to include in the transcript of the record any portions of either of said Exhibits 13 or 15, and it also appears that said appellee does not claim that it is material to include in the transcript of the record copies of all of the contents of said Exhibits 13 and 15.

Now, therefore, it is ordered that the clerk include in said transcript of the record copies of such portions only of said Exhibit 13 as said appellee claims to be material to be included therein, namely, stub of check for $300, dated June 25, 1902, "to C. W. Brown for Davis Bros.," the stub of check for $100, dated July 2, 1902, "to Brown, Durrell & Co.," and stub of check for $14.75, dated June 13, 1902, "to Standard Clothing Co.," and that the clerk include in said transcript of the record copies of such portions only of said Exhibit 15 as said appellee claims to be material to be included therein, namely, the first bank check in said Exhibit 15, and the stub of check number 238, for $100, dated June 11, 1904, "to Robinson-Blake Co."

By the Court,

[L. S.] JAMES E. HEWEY, *Clerk.*

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to John S. Williams, as he is Trustee in Bankruptcy of the Estate of Hudson Clothing Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit,
124 in the city of Boston, Massachusetts, on the fifth day of January next, pursuant to an appeal duly obtained from a decree of the District Court of the United States for the District of Maine, wherein John W. Manson, Albert W. Chapin and Freeman D. Dearth, trustees of the estate of Henry Hudson, a bankrupt, are appellants, and you are appellee, to show cause, if any there be, why the said decree, entered against the said appellants, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Clarence Hale, Judge of the District Court of the United States for the District of Maine, this seventh day of December, in the year of our Lord one thousand nine hundred and six.

CLARENCE HALE,
U. S. District Judge.

UNITED STATES OF AMERICA,
District of Maine, ss:

DECEMBER 22, 1906.

I hereby acknowledge service of the within citation.

JOHN S. WILLIAMS,
Trustee in Bankruptcy of the Estate of Hudson Clothing Company.

Clerk's Certificate.

UNITED STATES OF AMERICA,
District of Maine, ss:

I, James E. Hewey, Clerk of the United States District Court for the District of Maine, hereby certify that the foregoing are true copies of the papers mentioned in the præcipe of the Appellants, Petition of the Appellee and in the Order of the Court as to Record, filed December 7, 1906, in the cause entitled,

JOHN S. WILLIAMS, Trustee in Bankruptcy of the Estate of Hudson Clothing Company, Petitioner,
v.
JOHN W. MANSON, ALBERT W. CHAPIN, and FREEMAN D. DEARTH, Trustees in Bankruptcy of the Estate of Henry Hudson,

and also the original Citation issued upon the appeal of John W. Manson, Albert W. Chapin and Freeman D. Dearth,
125 & 126 trustees of the estate of Henry Hudson, a bankrupt, with the acceptance of service thereof.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at Portland, in said district, this first day of January, A. D. 1907.

[SEAL.] JAMES E. HEWEY, *Clerk.*

127 United States Circuit Court of Appeals for the First Circuit, October Term, 1906.

No. 688.

JOHN W. MANSON ET AL., Trustees of Estate of Henry Hudson, Appellants,
v.
JOHN S. WILLIAMS, Trustee of Estate of Hudson Clothing Company, Appellee.

Appeal from the District Court of the United States for the District of Maine.

Before Colt, Putnam, and Aldrich, JJ.

Opinion of the Circuit Court of Appeals.

May 16, 1907.

PUTNAM, *J.:*

The controversy in this case arose as follows: On the fourteenth day of July, 1904, Henry Hudson filed a voluntary petition in bankruptcy, on which he was adjudicated a bankrupt, and John W. Manson, Albert W. Chapin and Freeman D. Dearth were duly appointed

and qualified as trustees of his estate on the twenty-third day of August. Subsequently, on October 22 of the same year, a petition was filed by creditors against Henry Hudson and James Hudson, alleging that they were copartners doing business under the style of the Hudson Clothing Company, and praying that they be adjudged bankrupts as such copartners. Henry Hudson and James Hudson were brothers. On the ninth day of the succeeding
128 November a denial of bankruptcy was filed by the trustees of the estate of Henry Hudson. On November 21 Henry and James each filed their answers denying the allegations of the petition. On November 22 a further answer of the trustees was filed. On the twenty-fourth day of the succeeding January an order was made as follows: "Case to stand for hearing on question of adjudication on petition and answers of James and Henry Hudson;" and a hearing was had on June 13, 1905, by the District Court, as the result of which James and Henry were adjudged bankrupts, as copartners under the style of the Hudson Clothing Company. Subsequently a petition for a rehearing was filed and denied.

No doubt on the creditors' petition the real controversy considered and passed on was whether there was any such copartnership as the petition alleged. There was nothing, however, to qualify the order of January 24 that the case was to stand for hearing on the creditors' petition and the answers of James Hudson and Henry Hudson; and it is thus apparent from the record in the District Court that the trustees of the estate of Henry Hudson were not regarded as being in court with reference thereto.

At the time Henry Hudson filed his petition in bankruptcy, a stock of general merchandise, such as is customary in country stores, was in the control of himself or his brother James, or of both of them. This stock was taken possession of by the trustees in bankruptcy of Henry Hudson, and sold by them; and the present controversy arises out of a claim of John S. Williams, who was appointed trustee of the alleged bankrupt copartnership, to the proceeds of the sale on the ground that the merchandise belonged to the Hudson Clothing Company. The case was heard by the learned judge of the District Court, where the bankruptcy proceedings were pending, and decided by him in favor of Williams as trustee, whereupon the trustees of the estate of Henry Hudson appealed to us.

One feature of this case which we cannot pass by is that the questions of the existence of a copartnership and of the title to the stock of goods are identical; that is to say, if the stock of goods was the individual property of Henry Hudson, there was no copartnership, and, if there was no copartnership, the stock was his individual property. Therefore, the substance of a like issue to that
129 before us was adjudicated on the creditors' petition to have Henry Hudson and James Hudson adjudged bankrupts as copartners. The question at once arises whether the issue is not already concluded. It might have been if the trustees of Henry Hudson's individual estate had been allowed to intervene and become parties to the hearings on the creditors' petition. Of course, so far as ordinary bankruptcy proceedings are concerned, the adjudication

of the District Court on that petition determined the status of the Hudson Clothing Company; but, as the trustees who have appealed to us had not been included as parties thereto, as we have explained, the fact of the status of the Hudson Clothing Company for ordinary purposes cannot affect the alleged rights of the appellants, or bar these proceedings.

We agree with the conclusion of the learned judge of the District Court, and approve his observations so far as he has expressed himself, with reference to the issues before us. 148 Fed. Rep. 305. Probably, with regard to the adjudication on the creditors' petition, he had orally explained himself fully, so that on the issue now before us he did not deem it necessary to express himself except in a general way; and, as the questions involved are to a certain extent novel, we conclude that our opinion in reference thereto had better explain itself.

We will observe, however, that the learned judge of the District Court found that there was a copartnership in fact between the two brothers under the style of the Hudson Clothing Company. He did not rest his conclusion in any way on any hypothesis of a copartnership by estoppel in the strict sense of the expression. This is important, because we regard the law as settled that, in bankruptcy proceedings involving a copartnership, the copartnership is, ordinarily, to be regarded as a true entity, precisely as the individual partners are. Various incidental reasons are given for this, the principal one of which is that otherwise there would be two classes of creditors whose equities otherwise are equal, one of which classes would share in the proceeds of certain property on the ground that two or more persons were estopped as to them from denying a copartnership, while other creditors who had contributed to the same enterprise would be left to what might remain of the property
130 involved in the enterprise after the first class were paid, or to one or more individual estates. The fundamental reason, however, is that all through the various statutes of bankruptcy, whether in the United States or in England, which deal with copartnerships, the individuality and the entity of the copartnership are recognized to the same extent as the individuality and the entity of the several persons involved therein. The entire rule on this topic, so far as we have occasion to refer to it, is well deduced from *Ex parte Sheen*, 6 Ch. D. (1877), 235, to which case we will return again.

In view of these suggestions, however, we will say that there is in the record a large amount of correspondence, some of which may tend to show a copartnership by estoppel in favor of numerous creditors, and some of which might raise an indication that there was in fact no partnership. All of it, however, can be passed by as having no clear tendency in any direction so far as the issue before us is concerned, without any further comment in reference thereto. We regard the case as easily disposed of on the theory of a real copartnership on the facts stated by Mr. Henry Hudson, as follows:—

"For some time prior to April, 1902, I have been equitable

mortgagee, or in fact owning the stock of goods in the store conducted by J. A. Rand, in Guilford Village, Maine. Mr. George F. Newbegin, who then lived in Guilford, had an equitable interest in the goods. In the latter part of April, 1902, I deemed it for my interest to take said goods. I communicated with Mr. George F. Newbegin, and Mr. Newbegin and J. A. Rand took the account of stock as a basis of settlement between Rand and Newbegin. After this account of stock was taken, Mr. Newbegin turned over to me the stock of goods as my own. I had these goods and desired to sell the goods. Immediately after this transaction was closed with Mr. Newbegin, I had two telegrams to go to Bangor, where my brother, James Hudson, was conducting a grocery business. After I got to Bangor, I deemed it for his interest that he should close out his grocery business at Bangor, and for him I did close out the business. I told him that I had a stock of goods at Guilford and that he could go to Guilford and go into business there in the same store where the business had been carried on by J. A. Rand, and with this stock of goods he came to Guilford and went into the store. He had the original account of stock which had been taken of the goods and examined it. I said to him that I would form a corporation;
131 that it would take three of us; that myself and he with a third party would make up the corporation, and that he could have all of the goods, and that it should be his business, but the stock, when issued, I should hold, and as he could pay me, he was to pay me for the stock of the corporation, and it was to be turned over to me after the corporation was formed; I would transfer to the corporation the goods so that the corporation could hold the goods. It was talked between he and myself that my aunt, Martha Martin, should be the third party to make up the corporation; that he could hold some of the stock and Mrs. Martin should have enough so as to make her eligible as a party to the corporation. I think it was about the sixth of June that he went into the store to do business. Some time in the month of June I did draw up an agreement under the statute to form a corporation, and also wrote a certificate as required by law. Nothing further was done with these two documents by me. They remained in my office. I never showed them to my brother, James Hudson, or to Mrs. Martha Martin. I did not complete the organization at that time on account of the condition of my brother. I thought from week to week that circumstances might change, and then I would complete the organization. So that this was allowed to go from time to time until August, 1903, when my brother was away from the store for about six weeks, and returned the latter part of September or first of October, and after that pressing business matters of my own caused me to neglect to do anything further in regard to completing the organization of the corporation. My brother never saw the documents that I had drawn up. I never transferred to anyone the title of these goods which I had from Mr. Newbegin. My brother was in the store and conducted the business entirely. He did not consult with me at all in regard to the management of the business. Whatever goods I took from the store I purchased and

bought, principally at prices at the time which he gave me, and practically paid for everything that I took from the store, and so far as I can recollect I never had any goods charged that I took from the store. I made purchases there the same as I purchased goods at other stores. I never had anything from the store but what was paid for.

There never was any talk between us about forming a partnership, or that I should ever receive any profit from the business. I was to hold the stock of the corporation, when formed, only as security, and to be turned over to him as his property as he paid for it. I did what I did for the express purpose of having him go into business at Guilford to carry the business on as practically for himself. The idea of a corporation was that he could hold it and manage it best as his own and I still be in a measure protected by holding the stock. I cannot state the time when I first knew of the name of the Hudson Clothing Company. It must have been some time in the summer. I was not consulted in so far as the name was concerned. My first knowledge in regard to the name was ob-
132 tained not from my brother, but, I think, from seeing the advertisement which he put into the newspaper or on the boards he put out upon the highway or upon the corner of the store. We never had any talk whatever in regard to the use of the name, or in regard to the conducting on of the business. I advanced or let him have money from time to time to pay, as he said, bills that he had contracted. I also paid notes that he had given, these notes having been brought to me and indorsed by me for him. The amount which I paid on account of debts which he had contracted after he went into the store aggregate about $5000. These sums of money which I let him have I charged upon my books under the name of Hudson Clothing Company, except in some few instances. These instances I am not now able to state the dates or exact amounts. Not having seen my books for some time to make examination, I used the name of the Hudson Clothing Company simply as an identification to keep the account by itself. I did indorse for him, from time to time, notes given to persons, firms or corporations from whom he had purchased goods."

Affairs continued in the manner thus described until Henry Hudson filed his petition in bankruptcy, that is, until July, 1904, being more than two years, except that the name Hudson Clothing Company was publicly exhibited by a sign on the store where the business was transacted; that the bills received and rendered carried that title; and that, beginning with September, 1902, the account with the First National Bank of Guilford, at which the deposits of the business were made, which until that time had been kept in the name of James Hudson, was changed to Hudson Clothing Company, and checks were subsequently drawn as the checks of the Hudson Clothing Company. There was thus a general holding out to the public to that extent. Although for the purpose of maintaining merely an estoppel in the strict sense of the word, this cannot be availed of, as we have shown, it is available on the question of the existence of a copartnership in fact; because, as this all occurred in

the small town in which Henry Hudson lived, and as he admitted that he knew the name Hudson Clothing Company had been used, the learned judge of the District Court had a right to find as a fact that he knew, or ought to have known, the extent to which that had gone. Bearing in mind the fact that all agreements as to which no particular form is demanded may either be proven as made expressly or proven as made by implication, the fact of this public
133 use of the name, apparently that of a copartnership, must be given its due effect.

At this point we return to *Ex parte Sheen*, 6 Ch. D. (1877), 235. It is true that it was held by the Court of Appeal that the mere fact that one who has held himself out to a small number of creditors as a copartner with a trader is not barred from proving against the trader, whatever may be his liabilities to the few persons with reference to whom he may be estopped; but Lord Justice James, in his opinion at page 237, observes that there was no actual copartnership in the case, and "no ostensible partnership, no holding out to the world, that is, to creditors generally, that there was a partnership" "so as to make a joint estate." This fairly implies that a holding out such as we have here may, at least to some extent, support a finding that there was a copartnership by implied agreement, or that the parties had drifted into the relationship of copartners in fact. This subject is treated sufficiently in Williams on Bankruptcy Practice, 8th ed. 166, 167, where there is a discussion of reputed ownership, which of course does not exist in the United States to any definite extent, and also of an ostensible copartnership of the kind referred to by Lord Justice James, with some examination of the authorities on both these topics, which it is not necessary for us to follow out.

It is plain that the original arrangement between the two brothers did not contemplate a copartnership, but simply an entrusting by Henry to James of property belonging to Henry, to enable James to work it up for his own benefit. True it is that, in regard to the proposed corporation, the trustees of the estate of Henry Hudson cite *Fay v. Noble*, 7 Cush. 188; *Bank v. Almy*, 117 Mass. 476, and *Ward v. Brigham*, 127 Mass. 24, to the point that parties who join in the contemplated organization of a corporation do not thereby become copartners. Two of these cases relate to the general proposition that members of a *de facto* corporation which is defectively organized are not copartners, and the other to peculiar circumstances with regard to the relations among themselves of partners contemplating a corporation, the peculiar circumstances establishing no general principle. None are at all in point here. The intention to form a corporation slumbered so thoroughly, and so long, that it is of no effect.

134 Probably the best definition of partnership is that found in The Partnership Act (1890), 53 and 54 Vict. c. 39, which reads as follows: "Partnership is the relation which subsists between persons carrying on a business in common, with a view of profit." It is necessary to note the significance of the words "carrying on a business," which implies a relation entirely different from the enforced relation of tenants in common, as the owners of a ship or of

a house, who must either let the property lie idle or keep it in some way occupied or used, deriving a return from such occupation or use. Various illustrations of the force of this distinction will be found in Pollock's Notes to the act referred to, entitled "A Digest of the Law of Partnership," 5th ed., 2, 3. Mr. Justice Gray, in *Meehan v. Valentine*, 145 U. S. 611, 618, gives a definition almost precisely like that which we have cited from The Partnership Act, as follows: "The requisites of a partnership are that the parties must have joined together to carry on a trade or adventure for their common benefit, each contributing property or services, and having a community of interest in the profits."

The difficulty with definitions, like some of those brought forward by the trustees of the Henry Hudson estate, is that they put the agreement to share profits to the forefront. The right to share profits is, of course, an element in a true copartnership; but, when it is said that a copartnership involves an agreement to share profits, it goes beyond the legislative definition and that of Mr. Justice Gray which we have quoted, and unnecessarily beyond them. The right to share profits, of course, exists; but the right may arise without anything in the nature of an express agreement, indeed without anything in the nature of an implied one. The right to share profits is an indication of the existence of a copartnership, but it may result from an agreement of that effect, or it may flow out of the relationship which exists between the parties. It is true that the present case is embarrassed by the fact that, in the absence of any agreement as to the profits, in connection with the further fact that Henry Hudson contributed only assets while James Hudson contributed only personal services, it may be difficult to determine how profits would have been shared, and, therefore, it is plausible to suggest that there could have been no profits, and consequently no partnership. Nevertheless, both of these details are met by *Paul v. Cullom*, 132 U. S. 539, 550, where it was observed that, in the absence of any evidence showing a different intention, partners would be held to share equally both profits and losses.

135 & 136

The result is that, whatever may have been the intention when Henry Hudson put the property into the hands of James Hudson to be managed by him, those gentlemen and the circumstances of the business drifted entirely away from it, and the relations between them must be determined by what afterwards ensued. Those relations embraced all the elements necessarily included in the definitions given by The Partnership Act and by Mr. Justice Gray; and it is impossible to characterize the substantial result except as has been done by the learned judge of the District Court.

The question of interest passed on by the learned judge of the District Court was fully explained by us in *Hutchinson v. Otis*, 115 Fed. Rep. 937, in an opinion passed down on May 22, 1902, which is the same case reported as *Hutchinson v. Otis*, 190 U. S. 552. His decision in regard thereto conformed to the rule stated by us, and was undoubtedly correct.

The decree of the District Court is affirmed, and the appellee recovers his costs of appeal against the appellants as trustees.

137 & 138 United States Circuit Court of Appeals for the First Circuit, October Term, 1906.

JOHN W. MANSON ET AL., Trustees of Estate of Henry Hudson, Appellants,
v.
JOHN S. WILLIAMS, Trustee of Estate of Hudson Clothing Company, Appellee.

Final Decree in Circuit Court of Appeals.

May 16, 1907.

This case came on to be heard April 9, 1907, upon the transcript of record of the District Court of the United States for the District of Maine, and was argued by counsel.

On consideration whereof, It is now, to wit, May 16, 1907, here ordered, adjudged and decreed as follows: The decree of the District Court is affirmed, and the appellee recovers his costs of appeal against the appellants as trustees.

By the Court,

JOHN G. STETSON, *Clerk.*

139 & 140 United States Circuit Court of Appeals for the First Circuit.

JOHN W. MANSON ET AL., Trustees, Appellants,
v.
JOHN S. WILLIAMS, Trustee, Appellee.

Affidavit as to Amount in Controversy.

(Filed in Circuit Court of Appeals July 2, 1907.)

We, John W. Manson of Pittsfield in the county of Somerset and District of Maine, Albert W. Chapin of Monson in the county of Piscataquis and District of Maine, and Freeman D. Dearth of Dexter in the county of Penobscot and District of Maine, Trustees in bankruptcy of the estate of Henry Hudson of Guilford in said county of Piscataquis, being duly sworn, say that we are the appellants in the above-entitled cause, and that the matter in controversy in said cause is the title to thirty-five hundred dollars ($3500) in cash derived from the sale of a stock of goods, hence the amount in controversy exceeds the sum of three thousand dollars ($3000) exclusive of interest and costs.

JOHN W. MANSON,
ALBERT W. CHAPIN,
FREEMAN D. DEARTH,
Trustees of the Estate of Henry Hudson, Bankrupt.

Subscribed and sworn to by the above-named John W. Manson, before me, this twenty-seventh day of May, A. D. 1907.

[L. S.] HARRY R. COOLIDGE,
Notary Public.

Subscribed and sworn to by the above-named Albert W. Chapin, before me, this third day of June, A. D. 1907.

EDWIN R. HAYNES,
Justice of the Peace.

Subscribed and sworn to by the above-named Freeman D. Dearth, before me, this first day of June, A. D. 1907.

WINFIELD S. BROWN,
Justice of the Peace.

141 & 142 United States Circuit Court of Appeals for the First Circuit.

JOHN W. MANSON ET AL., Trustees, Appellants,
v.
JOHN S. WILLIAMS, Trustee, Appellee.

Petition for Appeal.

(Filed in Circuit Court of Appeals and Allowed July 2, 1907.)

The appellants, John W. Manson, Albert W. Chapin and Freeman D. Dearth, trustees in bankruptcy of the estate of Henry Hudson, respectfully show that the above-entitled cause is now pending in the United States Circuit Court of Appeals for the First Circuit, and that a judgment has therein been rendered on the sixteenth day of May, A. D. 1907, affirming the decree of the District Court of the United States for the District of Maine entered therein on the twenty-eighth day of November, A. D. 1906, and that the matter in controversy in said suit exceeds three thousand dollars besides costs; that this cause is one in which the United States Circuit Court of Appeals for the First Circuit has final jurisdiction, and that it is a proper cause to be reviewed by the Supreme Court of the United States on appeal.

Wherefore, the said appellants pray that an appeal be allowed them in the above-entitled cause directing the Clerk of the United States Circuit Court of Appeals for the First Circuit to send the record and proceedings in said cause with all things concerning the same to the Supreme Court of the United States in order that the errors complained of in the assignment of errors herewith filed by the said appellants may be reviewed and, if error be found, corrected according to the laws and customs of the United States.

Dated this tenth day of June, A. D. 1907.

JOHN W. MANSON,
HARRY R. COOLIDGE.
Attorneys for Appellants.

143 & 144 United States Circuit Court of Appeals for the First Circuit.

JOHN W. MANSON ET AL., Trustees, Appellants,
v.
JOHN S. WILLIAMS, Trustee, Appellee.

Order Allowing Appeal.

July 2, 1907.

It is hereby ordered that the appeal in the above-entitled cause to the Supreme Court of the United States be and hereby is allowed as prayed, the appellants to give bond in the sum of one thousand dollars ($1000) to be approved by the clerk.

By the Court,

JOHN G. STETSON, *Clerk.*

145 & 146 United States Circuit Court of Appeals for the First Circuit.

JOHN W. MANSON ET AL., Trustees, Appellants,
v.
JOHN S. WILLIAMS, Trustee, Appellee.

Assignment of Errors.

(Filed in Circuit Court of Appeals July 2, 1907.)

And now come John W. Manson, Albert W. Chapin and Freeman D. Dearth, as Trustees in bankruptcy of the estate of Henry Hudson, appellants in the above-entitled cause, in connection with their petition for appeal herein, present and file therewith their assignment of errors as to which matters and things they say that the decree entered herein by the United States Circuit Court of Appeals for the First Circuit on the sixteenth day of May, A. D. 1907, affirming the decree of the District Court of the United States for the District of Maine entered on the twenty-eighth day of November, A. D. 1906, is erroneous in this, to wit:

First. That James Hudson contributed one thousand dollars ($1000) of his own money to the alleged copartnership composed of James and Henry Hudson doing business under the name of the Hudson Clothing Company.

Second. That out of the one thousand dollars brought into the alleged copartnership by James Hudson bills were paid for goods which were put into the store by Henry Hudson.

Third. That the depositing of money in the bank in the name of Hudson Clothing Company, instead of in the name of James Hudson, is evidence of the existence of a copartnership in fact composed of James and Henry Hudson.

Fourth. That the correspondence entered as exhibits in the case does not raise an indication that there was in fact no partnership.

Fifth. That there was a general holding out to the public that James and Henry were copartners.

Sixth. That a general holding out to the public by James and Henry that they were copartners shows the existence of a copartnership in fact.

Seventh. That the use of the name "Hudson Clothing Company" is evidence of the existence of a copartnership in fact composed of James and Henry Hudson.

147 & 148 Eighth. That there was a copartnership in fact between James and Henry by implied agreement.

Ninth. That James and Henry drifted into the relationship of copartners in fact.

Tenth. That there was a copartnership in fact between James and Henry in the absence of any agreement expressed or implied between them to share profits.

Eleventh. That there was no evidence that both Henry and James intended that Henry should receive no profits.

Twelfth. That both Henry and James took steps to form a corporation.

Thirteenth. That the intention to form a corporation composed of James and Henry Hudson and Martha Martin makes James and Henry copartners in fact.

Fourteenth. That Henry lost title to the stock of goods which he entrusted to James before Henry was adjudicated a bankrupt.

Fifteenth. That a copartnership in fact composed of James and Henry had obtained title to the stock of goods at the time the petition in bankruptcy was filed against them.

Wherefore, the said Appellants pray the Honorable Court to examine and correct the errors assigned, and for a reversal of the decree of the United States Circuit Court of Appeals for the First Circuit entered in the above-entitled cause.

Dated this tenth day of June, A. D. 1907.

JOHN W. MANSON,
HARRY R. COOLIDGE,
Attorneys for Appellants.

149 & 150 United States Circuit Court of Appeals for the First Circuit.

JOHN W. MANSON ET AL., Trustees, Appellants,
v.
JOHN S. WILLIAMS, Trustee, Appellee.

Bond on Appeal.

(Approved July 18, 1907.)

Know all men by these presents, that we, John W. Manson of Pittsfield in the county of Somerset and State of Maine, Albert W. Chapin of Monson in the county of Piscataquis and State of Maine,

and Freeman D. Dearth of Dexter in the county of Penobscot and State of Maine, in our capacity as trustees in bankruptcy of the estate of Henry Hudson, bankrupt, as principals, and Fidelity and Deposit Company of Maryland, a corporation formed under the laws of the State of Maryland, and having an office at Waterville, in the county of Kennebec, and State of Maine, as surety, are held and firmly bound unto John S. Williams of Guilford in said county of Piscataquis, in his capacity as trustee in bankruptcy of the Hudson Clothing Company, bankrupt, in the full and just sum of one thousand dollars ($1000) to be paid to said John S. Williams, Trustee, aforesaid, his successors or assigns, to which payment well and truly to be made we bind ourselves, our successors, heirs, executors and administrators jointly and severally firmly by these presents. Sealed with our seals and dated this second day of July in the year of our Lord one thousand nine hundred and seven.

The conditions of this obligations are such that whereas at a session of the Circuit Court of Appeals of the United States for the First Circuit for the District of Maine, in a suit pending in said court between said John W. Manson, Albert W. Chapin and Freeman D. Dearth, Trustees in bankruptcy of Henry Hudson, bankrupt, Appellants, and John S. Williams, Trustee in bankruptcy of the Hudson Clothing Company, Appellee; the decree was therein rendered on the sixteenth day of May, A. D. 1907, affirming the decree of the District Court of the United States for the District of Maine entered therein on the twenty-eighth day of November, A. D. 1906, and the said appellants having obtained from said court an order allowing an appeal to the Supreme Court of the United States to
151 & 152 reverse the aforesaid decree, and a citation directed to the appellee is about to be issued citing and admonishing him to be and appear at the Supreme Court of the United States: now if the said appellants shall prosecute their said appeal to effect and shall answer all damages and costs that may be awarded against them, if they shall fail to make their plea good, then the above obligation is to be void; otherwise to remain in full force and virtue.

JOHN W. MANSON. [SEAL.]
ALBERT W. CHAPIN. [SEAL.]
FREEMAN D. DEARTH. [SEAL.]
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By CHARLES F. JOHNSON, [SEAL.]

Attest:

MARTIN F. BARTLETT, *Gen'l Agent.*

July 18, 1907.—Bond approved by me.

JOHN G. STETSON, *Clerk.*

153 *Citation on Appeal.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to John S. Williams, as he is Trustee in Bankruptcy of the Estate of Hudson Clothing Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, on the first day of August next, pursuant to an Appeal duly obtained from a decree of the United States Circuit Court of Appeals for the First Circuit wherein John W. Manson *et al.*, Trustees, are appellants and you are appellee, to show cause, if any there be, why the said decree, entered against the said appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Le Baron B. Colt, Senior Circuit Judge, and a Judge of the United States Circuit Court of Appeals for the First Circuit, this eighteenth day of July, in the year of our Lord one thousand nine hundred and seven.

LE BARON B. COLT,
Senior Circuit Judge.

154 UNITED STATES OF AMERICA.
District of Maine:

I, John S. Williams Appellee, do hereby acknowledge receipt by copy of the within citation and that it is a sufficient service thereof.

Dated this 22nd day of July, A. D. 1907.

JOHN S. WILLIAMS.

155 & 156 United States Circuit Court of Appeals for the First Circuit, October Term, 1906.

JOHN W. MANSON ET AL., Trustees of Estate of Henry Hudson, Appellants,
v.
JOHN S. WILLIAMS, Trustee of Estate of Hudson Clothing Company, Appellee.

Clerk's Certificate.

I, John G. Stetson, Clerk of the United States Circuit Court of Appeals for the First Circuit, certify (1) that the printed pages numbered 1 to 125, inclusive, hereto prefixed, contain and are a true copy of the transcript of record of the District Court of the United States for the District of Maine, in a cause entitled in said District Court, John S. Williams, Trustee in Bankruptcy of the Estate of Hudson Clothing Company, Petitioner, *v.* John W. Manson, Albert W. Chapin and Freeman D. Dearth, Trustees in Bankruptcy of the

Estate of Henry Hudson, upon which transcript of record said cause was heard in said Circuit Court of Appeals on April 9, 1907.

I further certify (2) that printed pages 127 to 135, inclusive, hereto prefixed contain and are a true copy of the Opinion of said Circuit Court of Appeals in said cause, and (3) that page numbered 137, hereto prefixed, contains and is a true copy of the Final Decree entered in said cause May 16, 1907.

I further certify (4) that page numbered 139, hereto prefixed, contains and is a true copy of the Affidavit as to Amount in Controversy filed in said Circuit Court of Appeals July 2, 1907.

I further certify (5) that page numbered 141, hereto prefixed, is a true copy of the appeal of John W. Manson *et al.*, Trustees, to the Supreme Court of the United States, and (6) that page num-
157 bered 143, hereto prefixed, contains and is a true copy of the Order Allowing Appeal entered in said cause July 2, 1907.

I further certify (7) that pages numbered 145 to 147, inclusive, hereto prefixed, are a true copy of the Assignment of Errors by said John W. Manson *et al.*, Trustees.

I further certify (8) that pages numbered 149 to 151, inclusive, hereto prefixed, contain and are a true copy of the Bond on Appeal and of the Approval thereof, July 18, 1907.

I further certify (9) that a citation issued upon said appeal returnable in said Supreme Court on the first day of August, 1907, which with service indorsed thereon, is hereto prefixed, pages numbered 153 and 154.

I further certify (10) that said pages 1 to 154, inclusive contain and are a true copy of the record and all proceedings in said cause in said Circuit Court of Appeals.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, the 30th day of July, A. D. 1907.

[Seal United States Circuit Court of Appeals, First Circuit.]

JOHN G. STETSON, *Clerk.*

Endorsed on cover: File No. 20,836. U. S. circuit court of appeals 1st circuit. Term No. 169. John W. Manson *et al.*, trustees of estate of Henry Hudson, appellants, *vs.* John S. Williams, trustee in bankruptcy of the estate of Hudson Clothing Company. Filed August 23d, 1907. File No. 20,836.

Supreme Court of The United States

OCTOBER TERM, 1908

Office Supreme Court, U. S.
FILED.
APR 20 1909
JAMES H. McKENNEY,
Clerk.

No. 169.

JOHN W. MANSON ET ALS., TRUSTEES IN BANKRUPTCY OF ESTATE OF HENRY HUDSON, APPELLANTS,

v.

JOHN S. WILLIAMS, TRUSTEE IN BANKRUPTCY OF ESTATE OF HUDSON CLOTHING COMPANY, APPELLEE.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

ARGUMENT FOR APPELLANTS,

By

Manson & Coolidge, Attorneys.

Supreme Court of The United States

OCTOBER TERM, 1908

No. 169.

JOHN W. MANSON ET ALS., TRUSTEES IN BANKRUPTCY OF ESTATE OF HENRY HUDSON, APPELLANTS,

v.

JOHN S. WILLIAMS, TRUSTEE IN BANKRUPTCY OF ESTATE OF HUDSON CLOTHING COMPANY, APPELLEE.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

ARGUMENT FOR APPELLANTS,

By

Manson & Coolidge, Attorneys.

Statement of the Case.

This is an appeal from a judgment of the United States Circuit Court of Appeals for the first Circuit; which affirmed the decree of the District Court of the United States for the District of Maine.

The parties to the controversy are John W. Manson, Freeman D. Dearth and Albert W. Chapin, Trustees of the bankrupt estate of Henry Hudson of Guilford, Maine, Appellants; and John S. Williams, Trustee of the bankrupt estate of a copartnership known as Hudson Clothing Company and composed of Henry Hudson and James Hudson, brothers, both of said Guilford, Appellee.

James Hudson, upon his voluntary petition dated July 1, 1904, was adjudged a bankrupt.

Henry Hudson upon his voluntary petition dated July 14, 1904 was adjudged bankrupt Aug. 8, 1904, and appellants are his trustees (2).

The alleged copartnership, Hudson Clothing Company, consisting of Henry and James, was upon involuntary petition dated Oct. 22, 1904, adjudged bankrupt June 17, 1905 (86) and appellee is the trustee.

The appellants as such trustees of Estate of Henry Hudson, claiming title, took possession of a stock of merchandise in Guilford village which had been held and traded in by someone under the name and style of Hudson Clothing Company, obtained an order from the referee (15) and sold same for thirty-five hundred dollars ($3500) in October, 1904.

The appellee as trustee of Hudson Clothing Company three days after his appointment Sept. 18, 1905, made demand for said sum as part of the assets of said copartnership, and upon refusal by appellants to pay over same, petitioned the referee for an order directing said payment (1). The appellants made answer (16) to

said petition admitting that upon an involuntary petition Henry and James Hudson had been adjudged bankrupts as a copartnership under the name of Hudson Clothing Company, but denying that said judgment is binding upon them because they were not parties to the proceeding, and denying that there was in fact any such copartnership, and further that if there were such a copartnership it had any title to the goods in controversy. They then affirm that Henry Hudson owned said goods and that appellants as his trustees succeeded to his title; that as such trustees they sold same for $3500 which amount they still hold as part of the assets of the estate of Henry Hudson.

Upon replication (17) filed the Referee heard the evidence and drew an opinion (54) containing an order (58) that appellants pay said sum with interest to appellee. Whereupon appellants filed a petition for review to the District Court (59); which Court sustained the referee on all but the allowance of interest (62) and ordered the appellants to pay over said sum of $3500 without interest (65).

The appellants appealed to the Circuit Court of Appeals (66) and filed an assignment of errors (67) setting up that no such partnership existed, and if it did, it had no title to the goods or the proceeds thereof, that Henry Hudson owned the goods and the appellants took title thereto and had title to the proceeds and that appellants were not parties to the proceedings, adjudging the alleged copartnership bankrupt.

The Circuit Court of Appeals heard the case and affirmed the findings of the District Court (114). From such decree this appeal (115) has been taken to the Supreme Court.

THE ONLY REAL QUESTION FOR THE COURT IS: WAS THERE EVER SUCH A COPARTNERSHIP AS HUDSON CLOTHING COMPANY, COMPOSED OF JAMES HUDSON AND HENRY HUDSON.

The appellants say there was not; appellee says there was.

The appellants might say that there was the further question, whether in case there was such a copartnership, it owned the goods from which the fund in controversy was derived, but it is unnecessary to raise that question for all the evidence and inferences of the case relate to a partnership only as to these goods.

The appellees have in the history of the case raised the question of right of appeal, also the question whether the fact of a copartnership was not res adjudicata. The position of appellants as to the right of appeal we state as follows:

The appellee as trustee in bankruptcy of the Estate of the Hudson Clothing Company (which being an estate entirely different from that of Henry Hudson, gave him no different position than if he claimed individually or in any other capacity), has intervened by petition in the bankrupt estate of Henry Hudson, making claim to $3500 which appellants as trustees of the estate of Henry Hudson have received for a stock of goods taken and sold as the property of the estate of Henry Hudson, which petition prayed the District Court for an order that appellants pay over this money to him. The petition was granted. The appellants claim the right of appeal on the ground that this is a "controversy arising in bankruptcy proceedings" under §24 A of the Bankrupt Act and that an appeal lies to this Court by §6 of the Act of March 3, 1891.

Hewitt v. Berlin Machine Works, 194 U. S. 296.

Security Warehousing Co. v. Hand, 143 Fed. 32; 74 C. C. A. 186; 16 A. B. R. 49. affirmed on appeal 206 U. S. 415.

Mason v. Walkowich, 80 C. C. A. 435; 150 Fed. 699; 10 L. R. A. N. S. 765.

York Mfg. Co. v. Cassell, 201 U. S. 344.

Gaylay v. Williams, 210 U. S. 41.

At prior hearings it has been claimed by appellee,-

that appellants were bound by the decree in bankruptcy adjudging The Hudson Clothing Company a copartnership consisting of Henry Hudson and James Hudson bankrupt. (see Docket Entries 86.)

That it was res adjudicata. The appellants deny this and the opinion of the Circuit Court of Appeals which is a part of this case recognizes and upholds the denial as it seems conclusively (108). We refer to it however because it was the sole reason upon which the referee found against us and ordered payment of the fund from appellants to appellee (54).

The Docket entry referred to by the Circuit Court of Appeals was made advisedly.

The Trustees of Henry Hudson filed answers (87) (71 & 72) which were not considered.

The bankrupt act allows only the bankrupt or a creditor to plead. §18b. The trustees were neither, so their answers were properly disregarded.

In re Columbia Real Estate Co., 112 Fed. 643; 7 A. B. R. 441.

The appellants were, therefore, not parties to the adjudication.

Bates v. Buddick, 2 Iowa 423; 65 Am. Dec. 774.

Pendleton v. Russell, 144 U. S. 640.

Though the same attorneys who acted for Henry and James also acted for appellants this did not make appellants parties.

Pepperdine v. Bank of Seymours, 100 Mo. App. 387; 73 S. W. 890.

Litchfield v. Goodnow, 123 U. S. 549.

If the appellants had been allowed to become parties in opposition to the adjudication they would not now be concluded.

Pepperdine v. Bank of Seymours, 100 Mo. App. 387; 73 S. W. 890.

Harmanson v. Bane, Fed. Cas. No. 6072.

The adjudication was not for the purpose of deter-

mining what the assets were, but rather to put the assets, if there were any, in control of the court for equal distribution among the creditors.

Whitney v. Wenman, U. S. Dist. Ct. N. Y. 14 A. B. R. 591.

Matter of Continental Corporation, U. S. Dist. Ct. 14 A. B. R. 538.

A judgment to be conclusive even between the same parties must be for the same purpose.

Aspden v. Nixon, 4 Howard 465, p. 498.

To allow an adjudication to change the title to property would amount to confiscation.

Silvy v. Tift, 123 Ga. 804; 1 L. R. A., N. S. 386; 51 S. E. 748.

This brings us to a consideration of what we claim to be the only point in the case, whether there was such a copartnership known as Hudson Clothing Company and composed of Henry and James Hudson. This depends upon the evidence as printed and the construction given to it by the Court. As there is no dispute as to facts we state them as given mainly by Henry Hudson beginning on page 47, and call attention to the fact that the Circuit Court of Appeals accepted Henry Hudson's statement of the facts and based their decision thereon, that there was an actual partnership (bottom p. 109) which was a construction of facts unwarranted as we claim in our assignment of errors.

Henry Hudson states that some time in April, 1902 he became owner of a stock of clothing situated in Guilford village, James was then in the grocery business in Bangor, Me. He was addicted to the excessive use of liquor and narcotics. Henry thought it for James' interest that the Bangor business should be closed up, and he went there and sold out the business for James, told him about his ownership of the stock of clothing involved in this hearing, and induced him to come to Guilford upon the assurance that he, Henry,

would put him in possession of the stock, set him up in business; and, that he, Henry, might be secured for the payment for this stock, a corporation should be organized by three persons (as is necessary under the laws of Maine) and that he, Henry, would hold all the capital stock except a nominal amount necessary to be held by two other parties; hold same as security for the purchase price of the goods; said capital stock to be transferred to James as he should pay for it.

The organization of the corporation was never completed beyond the drawing of preliminary papers which were never signed (75). The completion was delayed, at first on account of the condition of James, later because of pressing business matters of Henry. James entered into possession of the goods and carried on the business as his own. In the meanwhile James' habits did not improve in Guilford, but either continued the same or grew worse until Henry sent him away for treatment. After his return the formation of the corporation was delayed as stated, and the old condition and relationship of parties continued until Henry's bankruptcy when his trustees took possession of the goods and sold them for the sum involved in this action.

When Henry closed out James' grocery business in Bangor prior to his coming to Guilford a check for $1000 was realized therefrom. This check was not enough to pay James' Bangor debts but was considered by James and Henry as a fund to be applied that way. It was not used for that purpose for some months, and in the meantime was deposited in James' name in the Guilford Bank, and portions of it were temporarily loaned by James to Henry, and Henry used at least a part of these portions in settling some items of the indebtedness incurred in acquiring the stock which he turned over to James afterwards known as the stock of Hudson Clothing Company. However, all of the $1000 was finally used in the settlement of the Bangor indebtedness (49 & 50) (22 & 23) (27 & 28).

In the course of business James used the name of Hudson Clothing Company. He advertised by signs bearing the words "Hudson Clothing Company" (92 & 93), "Hudson Clothing Co., J. Hudson, Manager, H. Hudson, Pres." (92); used letter heads with these words: "Henry Hudson, Pres., James Hudson, Treas. & Mgr., Hudson Clothing Co., Dealers, etc." (70, 77, 78); kept a bank account the pass book reading on the cover "Hudson Clothing Co. The First National Bank of Guilford, Maine, in account with James Hudson" (82); gave notes signed "Hudson Clothing Co., James Hudson, Mgr." and endorsed by James Hudson and Henry Hudson (76); also signed "Hudson Clothing Co." and endorsed "Hudson Clothing Co., holden, waiving demand and notice, Henry Hudson, James Hudson" (76); signed letters "Hudson Clothing Co." (77); signed letters "James Hudson, Mgr., successors to J. A. Rand" (78); wrote letters saying that the Hudson Clothing Co. was being incorporated by Henry Hudson, Miss A. M. Martin and himself (91).

Henry Hudson guaranteed some accounts up to a limited amount (95). Some creditors insisted on such guarantees and would not sell otherwise (95-104). The business carried on under the name of Hudson Clothing Co. began in May, 1902, and continued until both Henry and James filed petitions in bankruptcy in July, 1904. The trustees of Henry then took possession of the stock in trade of Hudson Clothing Company, as set out in the statement of the case.

CLAIMS OF PARTIES.

The appellants claim that the appellee, who petitions below for this fund, has the burden of proof upon him to show that the Hudson Clothing Company was a co-partnership owning the stock of merchandise; but that the facts relied upon show the opposite. That there was a conditional sale by Henry to James of the stock of merchandise, title to remain in Henry until James paid for it. That there was no express or implied agreement

that Henry should have any of the profits of the business or interest therein, but the opposite. That Henry never had any right to any of the profits.

The appellees claim that the facts indicate a copartnership, either as to creditors by estoppel or a copartnership in fact. That the District Court when it adjudicated "The Hudson Clothing Company of Guilford, a copartnership, consisting of Henry Hudson and James Hudson" bankrupt (87) settled the question of a copartnership; that it is res adjudicata and all parties including appellants are bound thereby. The appellants say they are not bound because they were not parties to the proceedings.

The Referee, District Court, and Circuit Court of Appeals each for different reasons have sustained the appellee, and appellants have appealed.

ASSIGNMENT OF ERRORS.

The appellants have set out that the Court erred in finding (116).

FIRST. That James Hudson contributed one thousand dollars ($1000) of his own money to the alleged copartnership composed of James and Henry Hudson doing business under the name of the Hudson Clothing Company.

SECOND. That out of the one thousand dollars brought into the alleged copartnership by James Hudson bills were paid for goods which were put into the store by Henry Hudson.

THIRD. That the depositing of money in the bank in the name of Hudson Clothing Company, instead of in the name of James Hudson, is evidence of the existence of a copartnership in fact composed of James and Henry Hudson.

FOURTH. That the correspondence entered as exhibits in the case does not raise an indication that there was in fact no partnership.

FIFTH. That there was a general holding out to the public that James and Henry were copartners.

SIXTH. That a general holding out to the public by James and Henry that they were copartners shows the existence of a copartnership in fact.

SEVENTH. That the use of the name "Hudson Clothing Company" is evidence of the existence of a copartnership in fact composed of James and Henry Hudson.

EIGHTH. That there was a copartnership in fact between James and Henry by implied agreement. (147 & 148).

NINTH. That James and Henry drifted into the relationship of copartners in fact.

TENTH. That there was a copartnership in fact between James and Henry in the absence of any agreement expressed or implied between them to share profits.

ELEVENTH. That there was no evidence that both Henry and James intended that Henry should receive no profits.

TWELFTH. That both Henry and James took steps to form a corporation.

THIRTEENTH. That the intention to form a corporation composed of James and Henry Hudson and Martha Martin makes James and Henry copartners in fact.

FOURTEENTH. That Henry lost title to the stock of goods which he entrusted to James before Henry was adjudicated a bankrupt.

FIFTEENTH. That a copartnership in fact composed of James and Henry had obtained title to the stock of goods at the time the petition in bankruptcy was filed against them.

The last error assigned covers the whole ground. All the question in the case is contained therein. We claim there was no such copartnership, although it has

been so found by the three tribunals which passed upon it, the Referee, the District Court and the Circuit Court of Appeals.

The Referee so found because of the adjudication of bankruptcy of the two men as partners, which we have discussed.

The District Court neither approved or denied this reasoning but disregarded it, and found that there was a copartnership in fact, especially stating "Upon a careful review of the record I do not find evidence tending to show that Henry and James held themselves out to the public as a partnership, but rather that the contrary is true" (64).

The Circuit Court of Appeals found that there was a partnership because "there was thus a general holding out to the public." (111).

The last Court based its decision upon reasons different from the other Courts below, denying the existence of the reasons given by the Referee and setting up as its own reasons something which the District Court found did not exist.

On this account we must cover the ground and argue all the points considered by any of these courts.

First we will start with a statement of the Circuit Court of Appeals, which we believe the evidence justifies,-

"It is plain that the original arrangement between the two brothers did not contemplate a copartnership but simply an entrusting by Henry to James of property belonging to Henry to enable James to work it up for his own benefit" (112). This appears from the testimony of Henry (47), nowhere disputed or questioned, and accepted and quoted by Circuit Court of Appeals (109). This also relates to the two first errors assigned regarding one thousand dollars said by District Court (63) to have been contributed by James to the copartnership and out of which were paid bills for goods put into the

stock by Henry Hudson. This is true only in a limited literal sense, not substantially.

Henry Hudson being equitable mortgagee of the Rand stock of goods thought it best to close up the mortgage and take same (47). As part of the consideration for the mortgage, or the equity, was his promise to pay certain outstanding bills against Rand. (49). At this time he found his brother, who was addicted to the "excessive use of intoxicating liquors and narcotics" (51), and who was engaged in the grocery business in Bangor, Maine, in such condition that he deemed it for his interest to close out that business and bring James to his own home in Guilford, and did so inducing him by means of a trade whereby James was to have this Rand stock of clothing (47). James realized one thousand dollars by sale of the Bangor stock and brought it to Guilford and deposited it in the bank in his name (49 & 23). He also took the Rand stock of goods and began business with it, depositing the proceeds of any sales in his name in the same bank (23 & 24).

The $1000 was not enough to satisfy the Bangor indebtedness but it properly belonged to that business and it was considered by both James and Henry that it should be used in settlement of such indebtedness (50). Pending settlement once or twice James loaned Henry portions thereof and Henry paid with it at least some of the debts of Rand which he assumed when he bought the equity, but ultimately all the $1000 was restored and used by James to pay the Bangor debts (50).

The $1000 was never contributed to any partnership, was never deposited in any but James' name, and never used by any one but James except as he loaned portions of it to Henry temporarily. And there is no evidence tending to show otherwise.

Suppose, however, that James had put $1000 or more into the business being carried on under the name of Hudson Clothing Co. and had let Henry have some of it to pay the indebtedness he had incurred on account of

the Rand stock of Henry by James. It would not tend to prove a copartnership. The conditional sale from one to another contemplates payment, is ordinarily accompanied by payments from time to time. These things did not change, but confirmed "the original arrangement" mentioned by the C. C. A.

Another point made evidence of a partnership by the District Court (64) and which preceded or accompanied this "original arrangement" was the uncompleted attempt to form a corporation (by three parties not the two who have been held partners). The C. C. A. recognizes this as an error of the District Court when it states "The intention to form a corporation slumbered so thoroughly and so long that it is of no effect." (112). We claim that it is of no effect to prove a partnership for other reasons, and would have had no effect had it not slumbered.

Fay v. Noble, 7 Cush. 188.

Bank v. Almy, 117 Mass. 476.

Ward v. Brigham, 127 Mass. 24.

This is referred to by assignment of error 13 (117).

It is asserted by the C. C. A. that there was a general holding out to the public of a copartnership to a certain extent, and that this may be available on the question of existence of a partnership in fact (111).

We wish to deny the fact of a general holding out in the most emphatic way, and in doing so we say, with all due respect, that the C. C. A. have entirely misapprehended the evidence. They must have taken some impression, perhaps from the arguments, and not have given the evidence itself a careful examination, for the errors it makes are apparent.

The C. C. A. specifies the acts which constitute the general holding out as a partnership, First, some of the correspondence "may tend to show a copartnership by estoppel" (109). Second,- "The name Hudson Clothing Company was publicly exhibited by sign on the store where the business was transacted." (111). Third,-

"The bills received and rendered carried that title." (111). Fourth,- "Beginning with September 1902 the account with the First National Bank of Guilford, at which the deposits of the business were made, which until that time had been kept in the name of James Hudson, was changed to Hudson Clothing Company, and checks subsequently drawn as the checks of Hudson Clothing Company." "There was thus a general holding out to the public to that extent." (111).

This is the general summing up of acts which constitute the general holding out (111). All the acts that have been considered as such are named in these four.

The evidence is plain, that there were no such acts as the first and third; and that as to the second and fourth but half the act has been stated. The other half when stated shows that there was no public holding out of a partnership, but the opposite. Indeed, we do not put forward this claim unsupported, for while we tried this before two courts before reaching the C. C. A. and they found against us, it was on entirely different grounds, and the District Court states in emphatic language,-

"Upon a careful review of the record I do not find evidence tending to show that Henry and James Hudson held themselves out to the public as a partnership, but rather that the contrary is true" (64).

It is evident the District Court did make a careful review of the record in reaching this conclusion. It is also evident that the C. C. A. acted on a misapprehension of what the evidence really showed. The first act of holding out referred to is that some of the correspondence "may tend to show a partnership by estoppel." This is stated on page 109 and not included in the enumeration on page 111 of the acts of holding out, but as it is the only act outside of the enumeration which has been referred to as a holding out we take it up and say: that there is absolutely no such correspondence. The letters are printed and the record is open. An ex-

amination did not induce this conclusion. It is plainly an error.

The second act of holding out, "the name Hudson Clothing Company was publicly exhibited by a sign on the store where the business was transacted." This is one of the statements of half a fact which gives the wrong impression, even more strongly, as it is true, than if not. The evidence of the sign on the store is given by their own witness, Burgess (41), and is, that part of the sign reads "Henry Hudson, President, James Hudson, Business Manager," surely if the words "Hudson Clothing Co." used alone would indicate a copartnership they would not when used with these additional words. It is a corporation that has Presidents and Managers, not partnerships, especially "as this all occurred in the small town in which Henry Hudson lived" (111). Small town partnerships are not so advertised.

The third act of holding out, "the bills received and rendered carried that title." There is no evidence about any bills received or rendered carrying any title.

The fourth act of holding out, "Beginning with September, 1902, the account with the First National Bank of Guilford at which the deposits of the business were made, which until that time had been kept in the name of James Hudson, was changed to Hudson Clothing Company and checks were subsequently drawn as checks of the Hudson Clothing Company." This is the statement of fact as found made by C. C. A., but how much in error that Court was in finding that a holding out of a partnership, and if used for evidence of such a holding out, how unfair to the appellants is apparent when the full fact is stated by adding that; all of the time from May, 1902, when the business of Hudson Clothing Company began, to July, 1904, when it stopped, the bank account was kept and expressly stated on the pass book to be "The First National Bank, Guilford, Maine, in account with James Hudson" (82). Above this appeared the words, "Hudson Clothing

Company." The fact is made evident that James Hudson was doing business individually and alone under the name of Hudson Clothing Co.

He had no check book printed when he began business and for a few months used his own name. He did not change any account. He simply drew his money out of the first account and went on with the second in the same book containing the same statement as to whom the account was with.

These errors about a general holding out to the public of a partnership are stated in detail because they are errors of fact upon which is based the conclusion of law arrived at by the C. C. A.

The name Hudson Clothing Company has been used alone, but it was so used in but few instances without being accompanied by such words as Henry Hudson, Pres., and James Hudson, Treas. and Manager, so few that it is apparent it was not used with the intention of a holding out of a partnership. So used alone it would not hold out a partnership. Had there been an intention to hold out a partnership it would easily have been done by such words as Hudson Bros., James Hudson & Co., or Henry Hudson & Co. The words Hudson Clothing Co. signify a corporation instead of a partnership. The more so in this case, for a corporation was contemplated by the parties and the exhibits introduced by appellee himself show that James acting in good faith with the idea of a corporation had the advertisements (92 & 93), the letter heads (70, 77, 78), the notes given (76), and the bank account (82) always bear witness that it was a corporation generally displaying names of corporate officers, President, Treasurer, Manager, as such.

If occasionally ome advertisement or signature is merely "Hudson Clothing Company" this does not signify a partnership rather than a corporation. The theory of the C. C. A. by which they found the existence of a partnership on account of a general holding

out to the public is based upon the use of the words "Hudson Clothing Company," and if the use of these words does not signify a partnership rather than a corporation the reasoning of the court fails and, as we claim, the conclusion is erroneous.

We submit that the word "Company" especially in combination with other words and not preceded by the word "and" signifies a corporation rather than a partnership.

Goddard et al. v. Chicago & N. W. Ry. Co. 202 Ill. 362, 66 N. E. Rep. 1066 (1068).

Mattox v. State, 115 Ga. 212; 41 S. E. 709 (712).

Commonwealth v. Reinoehl, 163 Pa. 287, 291; 29 Atl. 896; 25 L. R. A. 247.

Broom v. Galena D. D. & M. Packet Co. 9 Minn. 239, 243.

We also submit that if these words as readily signify a corporation or other association as a partnership, the appellants must prevail as the appellee has the burden of proof.

More than this, the Court will not conclude that James did these acts to deceive people when it is just as easy to conclude he did them with an honest purpose to advertise a corporation when he thought one was in process, instead of a partnership when he knew there was none.

The C. C. A. finds,- "It is plain that the original arrangement between the two brothers did not contemplate a copartnership" (112).

It is evident that the business was begun in contemplation of a corporation. No pretense of a partnership was put out. Every motive was against it; Henry Hudson not feeling it safe to leave James in business away from home on account of his habits did not bring him home and cloth him with the powers of a general agent, as would be the case if he set him up as a partner.

He did entrust him with this stock of goods "to work it up for his own benefit" (112). Neither James or

Henry undertook to make anyone believe there was a copartnership. And one of the very best tests of whether they caused any general holding out to the public that tended to show a partnership is, did anybody ever think them a partnership? Or better, did any creditor believe it?

The C. C. A. says that the correspondence "has no clear tendency in any direction." We say it indicates there was no partnership (Error No. 4, p 117).

In this contest where an effort is made to show a partnership by holding out, no creditor or other person is produced who ever believed that Henry was a partner. The correspondence shows that all the large creditors knew Henry was not a partner and not liable. They would not give the Hudson Clothing Company credit on this account, and insisted upon having Henry's guaranty before they would ship goods. The whole correspondence leaves no doubt about this (95-104). Read what Wm. N. Prince says in his first letter (95). He would send no goods, as his letters show, until he got the guaranty of Henry (top p 95).

What the fact was and how it was understood before any controversy arose is clearly stated in the Rubber Co.'s letter of March 16, 1904,- "I understand that the Hudson Clothing Co. is owned by your brother, Mr. James Hudson, and that you sometimes assist Mr James Hudson in his business affairs" (102-103).

A very strong refutation of the appellee's position now taken, that there was a partnership, appears in the correspondence of two of the three petitioning creditors who petitioned Henry and James into bankruptcy as a copartnership (87), they are the moving parties, Robinson-Blake Co. and J. M. Arnold Shoe Co. For two years while Hudson Clothing Co. was doing business they acted on the supposition that Henry was not a partner in Hudson Clothing Co., obtaining and accepting his guaranty to a limited amount (104), when if he were a partner he would have been liable for all.

After James and Henry became bankrupt these two creditors come forward with a petition asking the Court to find them copartners, because they have been so held out to the public. We answer, this is bad faith; you knew they were not partners; your letters show it. We say this is the position of all the creditors whose position has been shown. Can it be possible that the Court will hold a partnership here to benefit and pay creditors who knew all through the course of dealing there was none?

A holding out imposes a partnership liability only in favor of those creditors who have known of the holding out and been deceived thereby.

Thompson v. Bank, 111 U. S. 529.

This is the keynote of this case, in October after the failures in July, 1904 the two creditors mentioned, Robinson-Blake Co. and J. M. Arnold Shoe Co. figured they could realize more by having Hudson Clothing Company adjudged a bankrupt than by following their original course and proving claims on their guarantees and endorsements against Henry individually.

PARTNERSHIP IN FACT.

It was held by the District Court (64) and by the C. C. A. (109) that a holding out does not constitute a partnership in fact and that a partnership in fact must be shown. This ruling is fully supported by the authorities. Thus in Collier on Bankruptcy, 6th ed. page 75, in stating what constitutes a partnership under the Bankrupt Act it is said,- "The section under discussion, thus applies only to general partnerships. It does not extend to partnerships by estoppel, or such as are partnerships as to creditors only."

In re Beckwith, 130 Fed. 475; 12 A. B. R. 453, it is said "Not a mere holding out by which he may become liable to creditors; otherwise the proceedings might be good as to some creditors with respect to whom this was true, and not as to others as to whom it was not."

Reversed as to findings of fact, but affirmed as to law

in Jones v. Burnham, Williams & Co., 138 Fed. 986; 15 A. B. R. 85. It seems to us the evidence went much further towards proving a partnership in that case than does the evidence in our case.

In Wood v. Pennell, 51 Me. 52, 61, it is said,- "There can never be a general liability as a partner by estoppel."

The creditors of Hudson Clothing Co. had only the derivative rights of James and Henry, and if James had no title to the property as against Henry at the time of the adjudication such creditors had no rights which were superior to the rights of the individual creditors of Henry.

Case v. Beauregard, 99 U. S. 119; Fitzpatrick v. Flannagan, 106 U. S. 648; Huiskamp v. Moline Wagon Co., 121 U. S. 310.

Therefore in order for the alleged partnership creditors to be entitled to the property as against the individual creditors of Henry it must be proven that James had a joint interest in the property at the time of adjudication, or in other words, that there was a partnership estate, and to prove this it must be shown that James and Henry were actual partners.

Glenn v. Gill, 2 Md. 1.

Swan v. Sanborn, 4 Woods C. C. 625; Fed. Cases No. 13, 675.

Broadway National Bank v. Wood, 165 Mass. 312; 43 N. E. 100.

Bixler v. Kresge, 169 Pa. St. 405; 32 Atl. 414.

Deavitt v. Hooker, 73 Vt. 143; 50 Atl. 800.

York County Bank's Appeal, 32 Pa. St. 446, cited in Case v. Beauregard supra.

The foregoing authorities relate to cases where at least some creditors have been deceived. It is safe to say that as no creditors in this case are shown to have been deceived, the rule would apply with greater force.

A holding out has been regarded by C. C. A. as some

evidence of a real partnership. "It is available on the question of the existence of a partnership in fact" (foot of p. 111). It "must be given its due effect." (112).

We submit that the C. C. A. has recognized two doctrines held by two classes of cases, entirely distinct and inconsistent, and at the same time undertaken to harmonize and use them both in reaching a conclusion that there was a partnership in fact in this case.

The whole tenor of the decisions of both the District Court and C. C. A. in this case is that a real partnership must be shown, otherwise the appellee cannot prevail, and that a mere "holding out," an ostensible partnership, an apparent partnership as distinguished from a real partnership, is not sufficient. Then in spite of this doctrine which it so clearly approves the C. C. A. bases its decision on the authority of an inference to be drawn from the remarks of the Court in Ex parte Sheen, 6 Ch. D. 235. This case, or this inference, and the cases to support it wherever they are found, are cases where no real partnership existed and therefore cases where it was held not necessary to show a real partnership to entitle the creditor to resort to the class of assets in question.

We confidently assert that every such case that may be cited or found will prove to be a case where it is apparent no partnership existed as between the parties; but where on account of the "holding out" some individual has been deceived, or where the holding out has been so general and public that it can be assumed that all creditors and the public had a right to rely upon the assumption that a partnership existed.

This doctrine is evidently that of a partnership by estoppel. As we have before observed in bankruptcy and insolvency proceedings in this country a partnership by estoppel is of no effect. The District Court and C. C. A. so recognize and at the same time the C. C. A. found it necessary to and did use a case based upon it to uphold the decision that appellee is entitled to the

fund in question.

We submit that the doctrine that a real copartnership is the only partnership recognized in bankruptcy proceedings must be overruled before the case of Ex parte Sheen or any inference to be drawn therefrom can avail to show a partnership here.

The real question and only one in this case is, was there a partnership in fact?

The appellants are said to have "put the agreement to share profits to the forefront" in the Court below (113). We certainly have not made this point more prominent than have the textwriters. "The basis of all partnerships is an agreement to share the profits" says Lindley on Partnership in the first sentence of Book 1, Chapter 1.

We still insist that such an agreement either express or implied is necessary, but are willing to accept in place of this method of expression the language of the Court that in a partnership "the right to share profit of course exists" (113). And we deny that Henry Hudson had the right to share profits of the Hudson Clothing Co. (48) (50).

This was the ground upon which a partnership was found in Frost v. Walker, 60 Me. 470, cited by the District Court (64) in which case itself the Court say "we think them entitled to share in the profits of the business." "That shareholders and subscribers alike embark in a concern of which they expect to share the profits or losses."

"They became entitled to share in its profits if any should be made, and, as a legal consequence became partners."

The definition and case cited by C. C. A. both recognize the "view of profits" and "a community of interest in the profits" as essential (112 & 113).

In 22 Am. & Eng. Encyc. of Law (2nd ed.) 14 it is said,- "Two essentials are present in every partnership; these are, first a contract between the partners; and

second that contract must be for the sharing as common owners of the profits of the business."

In Brotherton v. Gilchrist, 144 Mich. 274; 107 N. W. 890; 115 Am. St. Rep. 397, it is declared that a partnership exists if there is a community of property, community of interest, and community of profits. If a single one of these elements is lacking there is no partnership.

In Walker v. Tupper, 152 Pa. St. 1, it is said "Participation in profits is, however, the most generally accepted test, and though it is conceded that its presence is not conclusive in favor, its absence may be regarded as conclusive against partnership."

In Sikes v. Work, 6 Gray 433, it is said,- "There was no agreement between them to share the profit and loss of the joint undertaking, which is the essential and distinguishing feature of the contract of copartnership."

Henry "was a mere security holder throughout.***** He could in no event participate in the profits as a principal trader in the management of the business, which is essential to a partnership." Fish v. Thompson, 68 Vt. 273.

See also Hunt v. Oliver, 118 U. S. 211.

Furthermore there can be no partnership without "an intention of the parties to become partners." Shaeffer v. Blair 149 U. S. 258.

In London Ins. Co. v. Brenham, 116 U. S. 461, it is said,- "Persons cannot be made to assume the relation of partners as between themselves when their purpose is that no partnership shall exist."

As between the parties themselves the crucial test of whether or not the partnership exists is the intention of the parties.

Case note to Clark v. Emery, 5 L. R. A. (N. S.) 503.

That there was no intention to form a copartnership is the undisputed evidence of the case. It is not probable that Henry fully appreciating the condition of his

brother would engage in the relation of a partner; and if he had assumed such a relationship would have limited his guarantees to specific amounts.

Henry's testimony stands uncontradicted. "I told him that I had a stock of goods at Guilford and that he could go to Guilford and go into business" (47). "That it should be his business, but the stock when issued, I should hold and as he could pay me he was to pay me for the stock of the corporation" (48). "There never was any talk between us about forming a partnership or that I should receive any profit from the business. I was to hold the stock of the corporation, when formed, only as security and to be turned over to him as his property as he paid for it. I did what I did for the express purpose of having him go into business at Guilford to carry on the business as practically for himself; the idea of a corporation was that he could hold it and manage it best as his own and I still be in a measure protected by holding the stock" (48).

The C. C. A. recognized the relationship, says,- "It is plain that the original arrangement between the two brothers did not contemplate a copartnership but simply an entrusting by Henry to James of property belonging to Henry to enable James to work it up for his own benefit" (112).

It is difficult to find, after the Court has recognized and so clearly stated the relation of these two brothers in the beginning to find where, when and how the change took place to a partnership. If it did so, it did so without the knowledge or intention of either. (James' testimony, p. 26 & 27) (Henry's 47). And again we call attention to the fact that no person introduced and no circumstance shown contradicts them.

The Circuit Court of Appeals in reaching the conclusion that there was finally a partnership in fact starts with the idea as stated by them in the last quotation.

There was then at the starting point no partnership

but the Court finds that somewhere, at some time later "there was a partnership by implied agreement, or that the parties had drifted into the relationship of copartners in fact." (112).

As there is no circumstance at any later period to indicate an implied agreement from which to date the partnership relation the conclusion of the Court must rest on the latter part of their statement "that the parties had drifted into the relationship of copartners in fact."

In Thompson v. Bank, 111 U. S. 529, parties in a suit against them by a creditor, had held themselves out to the world as partners for more than six years, yet there was no suggestion or intimation that they had drifted into the relationship of partners in fact and we confidently submit, that no decision can be found supporting such a doctrine.

The undoubted result of sustaining the lower Court in this finding is to open up a new field of litigation the result of which cannot be foreseen. This fact in itself should not perhaps prohibit such a finding but should demand clear and strong reasons to sustain it.

James was at one time a trader doing business under the title Hudson Clothing Co. Henry was his creditor having security on the goods. While this relation existed debts were contracted and credits were given.

At some time, no one knows when, or where, or how, the relation changed. James and Henry became partners, "drifted into the relationship," new debts were contracted, new credits given.

No claim is set up that this made a partnership ab initio. The situation of third persons could not thus be changed from creditors of or debtors to the individual, to creditors of or debtors to the firm. The creditors cannot tell whether they are creditors of James or the firm, or against which estate to prove their claims. Indeed a creditor of long standing may have to divide his

account and prove part against each estate. But where shall he divide it? The imperceptible change in this "drifting" from individual to partnership has left no mark which Court or counsel can suggest.

The same difficulty arises with the trustees in collecting the accounts. What part shall the trustee of James demand and what part the trustee of the firm composed of Henry and James. And shall this Court order, that part of the $3500 fund in dispute shall be paid over to the appellee as trustee of a firm which acquired title to the last goods bought and leave the remainder in possession of appellants who, surely must have owned that portion of the old stock of goods which was owned by Henry and "entrusted to James—to enable James to work it up for his own benefit."

There is nothing in the case to show when or how the title passed and it would seem incumbent on the moving party to show something to mark a change of ownership. A condition once recognized as existing is presumed to continue until something is shown in evidence signifying a change. The dividing point where James ceased doing business for himself under the title of Hudson Clothing Co. and where Henry and James began as a firm to do business as Hudson Clothing Co. is and must ever remain, a matter of pure speculation and this in spite of the necessity which it is evident must exist for creditors and debtors to know who are the debtors and creditors.

These difficulties did not appear to the creditors who, throughout the whole period when all parties were doing business as solvent concerns, supposed they were trusting James and relying partly on Henry's guaranty and endorsement (95-103), and as stated by one "I understand that the Hudson Clothing Co. is owned by your brother James Hudson and that you sometimes assist Mr. James Hudson in his business affairs" (103).

We submit that there was no partnership in fact and

that the decree of the Circuit Court of Appeals should be reversed.

For the Appellants

By their Attorneys,

JOHN W. MANSON

HARRY R. COOLIDGE

Supreme Court of The United States

October Term, 1908

NO. 169

JOHN W. MANSON, ET AL.,

TRUSTEES OF ESTATE OF HENRY HUDSON,

APPELLANTS

v

JOHN S. WILLIAMS,

TRUSTEE OF ESTATE OF HUDSON CLOTHING COMPANY,

APPELLEE.

Appeal from the United States Circuit Court of Appeals for the First Circuit

a petition with the referee, asking for an order to sell a stock of goods. The order was granted, the goods were sold, and the proceeds were delivered into the custody of the trustees. After the sale, the trustee of the Hudson Clothing Company, filed a petition with the referee, claiming that he was properly entitled to receive the proceeds of the stock, and asking for an order upon the Trustees of Henry Hudson to pay over the proceeds to him. An answer was filed, denying the right of the petitioner to receive the funds. After due hearing, the trustees of Henry Hudson were ordered to pay over the proceeds to the trustee of the Hudson Clothing Company. Upon petition for review of the referee's finding, the District Court sustained the ruling of the referee, except as to the matter of interest.

In the case First National Bank v. Chicago Title and Trust Co., the essential facts are the same as in the case at bar. There an officer of the Bankruptcy Court filed a petition to sell certain seeds, which were claimed by the First National Bank of Chicago. The Court granted an order to sell the seeds, the seeds were sold, and the proceeds were delivered into the possession of the Chicago Title and Trust Co. as an officer of the Bankruptcy Court. After the sale, the First National Bank filed a petition in the Bankruptcy Court, making claim to the proceeds, and praying for an order for payment of the proceeds to the petitioner. An answer was filed, denying the right of the petitioner to receive the proceeds from the sale of the seeds.

After the hearing, the Court granted the prayer of the petitioner and an appeal was taken to the Circuit Court of Appeals. That Court considered the matter upon the *appeal*, and reviewed questions of fact. The case was then taken to the Supreme Court upon petition for certiorari, and the Supreme Court held clearly that the proceeding was "a proceeding in bankruptcy," that an appeal from the District Court to the Circuit Court of Appeals did not lie, and that the Circuit Court of Appeals erred in reviewing questions of fact..

In this case, the distinction between "proceedings in bankruptcy" and "independent suits" was carefully and fully discussed, and Fuller C. J., in the opinion says:

"And, in any view, the proceeding was a *proceeding in bankruptcy*. Being such, an appeal from the decree of the district court, under sec. 25a, did not lie, and parties aggrieved could only invoke the supervisory power under sec. 24b. Holden v. Stratton, 191 U. S. 115, 48 L. ed. 116, 24 Sup. Ct. Rep. 45: Hutchinson v. Otis, 190, U. S. 552, 47 L. ed. 1179, 23 Sup. Ct. Rep. 778.

But this was an appeal, and not a petition for revision, and hence it was that the circuit court of appeals reviewed the questions of fact, and declined to accept the findings of the referee and the district court. In the exercise of supervisory power, it would have been confined to matter of law. *We are clear that an appeal would not lie*, and the decree

of the circuit court of appeals must be reversed, with a direction to dismiss the appeals, and remand the cause to the district court for further proceedings in conformity with this opinion."

We submit that the action of the Trustees of the estate of Henry Hudson, leading up to the case at bar, was but a step in their official proceedings, that is to say, in their proceedings in the estate of Henry Hudson.

And the District Court sustained that contention as being a *proceeding in bankruptcy*, and hence allowed the Apellee no interest, to which item we would have been entitled, we say, had this been an "independent suit," "a controversy arising out of the settlement of the estate of a bankrupt."

We call the attention of the Court to the fact that the decision in First National Bank v. Chicago Title and Trust Company is subsequent to the decisions of the Court in Holden v. Stratton, 191 U. S. 115; Hewitt v. Berlin Machine Works, 194 U. S. 296, and other cases relied upon by the Appellants.

II

THE HUDSON CLOTHING COMPANY HAVING BEEN DULY ADJUDICATED BY THE COURT OF BANKRUPTCY A BANKRUPT PARTNERSHIP, COMPOSED OF JAMES AND HENRY HUDSON, THE STATUS OF THE HUDSON CLOTHING COMPANY, AS A BANKRUPT PARTNERSHIP, IS RES ADJUDICATA,

AND CANNOT BE QUESTIONED BY THE APPELLANTS IN THIS PROCEEDING.

An adjudication in bankruptcy is in the nature of a decree *in rem*, so far as it fixes the status of the bankrupt. The adjudication determines the status of the bankrupt, and all persons are bound by the adjudication, even if they were not parties to the bankruptcy proceedings, and even if they had not actual notice of the proceeding. If the Court rendering the decree had jurisdiction, such decree cannot be attacked collaterally, but only by direct proceeding in a competent Court.

Hanover National Bank v. Moyses, 186 U. S., 181.
Chapman v. Brewer, 114 U. S., 158.
Lamp Chimney Co. v. Ansonia Brass, etc., Co., 91 U. S. 656.
Michaels v. Post, 88 U. S., 526.
Shawham v. Wherritt, 7 How. 643.
In re Billings, 17 Am. B. R., 84.

"Proceedings in bankruptcy are, generally speaking, in the nature of proceedings *in rem*, as Mr. Justice Grier remarked in Shawham v. Wherritt, 7 How. 643. And in New Lamp Chimney Co. v. Brass and Copper Co., 91 U. S. 662, it was ruled that a decree adjudging a corporation bankrupt is in the nature of a decree *in rem* as respects the status of the corporation."

Hanover National Bank v. Moyses, 186 U. S., 181.

"If the District Court had jurisdiction of the subject matter, and the bankrupt voluntarily appeared, and the adjudication was correct in form, it is conclusive of the fact decreed, and can be impeached only by a direct proceeding in a competent court, and can no more be attacked collaterally in a suit like the present than any other judgment. Michæls v. Post, 21 Wall., 398 (88 U. S., bk. 22 L. ed. 520.)"

Chapman v. Brewer, 114 U. S., 158.

"Unless reversed or annulled on equitable or statutory grounds, in some proceeding or suit authorized by law for that purpose, the judgment or decree of a court of competent jurisdiction, upon the merits, concludes the parties and privies to the litigation and constitutes a bar to a new action or suit involving the same cause of action, either before the same or any other tribunal; and further, any right, fact, or matter in issue and directly adjudicated, or necessarily involved in, the determination of an action before a competent court in which a judgment or decree is rendered upon the merits cannot be again litigated between the parties and privies, whether the claim or demand, purpose or subject matter of the two suits be the same or not."

U. S. Bank vs. Beverly, 1 How. (U. S.) 134;
New Orleans vs. Citizens' Bank, 167 U. S. 371;
Mitchell vs. Chicago Bank, 180 U. S. 471;
Lander vs. Mercantile Bank, 186 U. S. 458.

"The doctrine of res judicata applies and treats the

final determination of the action as speaking the infallible truth as to the rights of the parties as to the entire subject of the controversy and every part of it must stand irrevocably closed by such determination."

Foster vs. Posson, 105 Wis. 99.

"No other evidence can afford strength to the presumption of truth it creates, and no argument can detract from its legal efficacy."

Jeter vs. Hewitt, 22 How. (U. S.) 352.

"A decree is entitled to the same verity, and is no more liable to be impeached collaterally than the decree of any other court possessing general jurisdiction: which of itself shows that the case before the court is controlled by the general rule, that where it appears that the court had jurisdiction of the subject-matter, and that process wasduly served or an appearance duly entered, the judgment or decree is conclusive, and is not open to any inquiry upon the merits. 2 Smith L. Cas. 7th ed., 622; Freem. Judg. 2d ed., sec. 606; Hampton v. McConnel, 3 Wheat. 234; Gelston v. Hoyt, 3 Wheat., 312; Slocum v. Mayberry, 2 Wheat., 10; Nations v. Johnson, 24 How., 203 (65 U. S., XVI., 631); D'Arcy v. Ketchum, 11 How., 166; Webster v. Reid, 11 How. 437.

Such a decree, adjudging a corporation bankrupt, is in the nature of a decree *in rem*, as respects the status of the corporation; and, if the court rendering it has jurisdiction,

it can only be assailed by a direct proceeding in a competent court, unless it appears that the decree is void in form, or that due notice of the petition was never given. Way v. Howe, 108 Mass., 503; Ex parte Wieland, L. R., 5 Ch. App. 489; Bk. v. Olcott, 46 N. Y., 15; Revelle v. Blake, L. R. 7 C. P., 308."

Lamp Chimney Co. v. Ansonia Brass, etc., Co., 91 U. S. 656.

"The public notice required by the act [Bankruptcy Act] having been given, the creditors must be treated as having notice of the proceedings, and an opportunity to make their objections to them, and having neglected or refused so to do, they ought not to be allowed to impeach them collaterally, as they are in the nature of a proceeding *in rem*, before a court of record having jurisdiction.

* * * * * * * *

As the court had jurisdiction of the subject matter and person of the bankrupt, the decree is thus made conclusive evidence of the title of the assignee."

Shawham et. al. v. Wherritt, 7 How., 627.

"Congress, not being bound to provide for notice to creditors of the institution of involuntary proceedings, has made no provision for such notice, other than that which results by operation of law from the filing of the petition. The proceeding is in a large sense *in rem*. What is done therein is binding upon creditors, whether or not they have actual notice or knowledge of the pendency of the proceed-

ing. The filing of the petition by proper parties, making the jurisdictional allegations, operates as lis pendens, and is notice to all the world. Bank v. Sherman, 100 U. S. 406; Mueller v. Nugent, 184 U. S. 14, 7 Am. B. R. 224."

In re Billing, 17 Am. B. R., 8.

We quote from the adjudication of bankruptcy (page 91) as follows:

"In the Matter of The HUDSON CLOTHING COMPANY, the copartners in which are HENRY HUDSON and JAMES HUDSON, Bankrupt.

At Portland, in said District, on the 17th day of June, A. D. 1905, before the Honorable Clarence Hale, Judge of said Court in bankruptcy, the petition of Robinson-Blake Co., J. M. Arnold Shoe Co., and Crosby & Dwinel, that the partnership of Hudson Clothing Co., the copartners in which are Henry Hudson and James Hudson—be adjudged bankrupt, within the true intent and meaning of the acts of Congress relating to bankruptcy, having been heard and duly considered, the said partnership is hereby declared and adjudged a bankrupt accordingly."

We claim that by virtue of said adjudication, the status of the Hudson Clothing Company, as a bankrupt partnership, the copartners in which are James and Henry Hudson, has been definitely fixed, and that this decree cannot be attacked by the appellants in this proceeding.

We claim that in this proceeding the appellants would

be bound by this decree, even if they were not parties to the proceedings in which the adjudication was made, but we shall show in argument under point III that, in fact, the appellants not only had notice of the pendency of the bankruptcy proceedings, but actually appeared in opposition to the petition for an adjudication, filed answers and took part in the hearing upon the issue determined by the District Court.

III

THE QUESTION OF THE OWNERSHIP OF THE STOCK OF GOODS BY THE HUDSON CLOTHING COMPANY IS RES ADJUDICATA.

We shall show that the appellants were parties to the bankruptcy proceedings against the Hudson Clothing Company in which the Hudson Clothing Company was adjudicated bankrupt as a partnership composed of James Hudson and Henry Hudson; that in that proceeding they entered appearances in opposition to the bankruptcy petition; that they employed an attorney to contest that petition in their behalf; that they filed answers, and that they actually took part in the litigation which finally resulted in the adjudication in that proceeding. We shall also show that the question of the ownership of the stock of goods in controversy was made a material issue in the proceedings to have the Hudson Clothing Company adjudicated bankdrupt, that this issue was litigated in those proceedings, an

that the District Court, in making the decree adjudicating the Hudson Clothing Company bankrupt, necessarily determined that the stock of goods was the property of the bankrupt partnership.

(*a*) **It is well settled that one who openly defends a suit brought against another, or who assists in the defense of such suit, for the purpose of aiding his own interests which would be directly affected by the judgment in the suit, is in a later action involving the same issues, as much bound by the judgment in the first suit as he would be if he had been a party to the record. In such case the person so participating in the suit is a party within the rule stated.** ~~Same cases.~~

Lovejoy v. Murray, 70 U. S., 3 Wall., 19.
Tilton v. Cofield, 93 U. S., 163.
Robbins v. Chicago, 71 U. S., 4 Wall., 657.
Brooklyn City etc. v. Bank etc., 102 U. S., 14.
Hanke v. Cooper, 108 Fed. Rep. 925.
Tootle v. Coleman, 107 Fed. Rep. 41.
James v. Germania Iron Co., 107 Fed. Rep. 597.
Theller v. Hersey, 89 Fed. Rep. 575.
Carey v. Roosevelt, 83 Fed. Rep., 243.
Sanders v. Peck, 87 Fed. Rep., 61.

Bailey v. Sundberg, 49 Fed. Rep., 583.
Bradley v. Eagle Mfg. Co., 57 Fed. Rep., 980.
Herman on Estoppel and Res Judicata, Vol. 1, Sec. 156, 182 and 186.
Amer. and Eng. Ency. of Law, Vol. 24, p. 737 (2d Ed.).

In Lovejoy v. Murray, 70 U. S. (3 Wall.) 19, a party was held estopped by reason of a judgment in a prior suit, although he was not a party to the record in the prior suit. Justice Miller in the opinion cites with strong approval the following from Greenleaf on Evidence, secs. 522-523:

"Under the term 'parties,' in this connection, the law includes all who are directly interested in the subject-matter, and had a right to make defense or to control the proceedings; and to appeal from the Judgment. This right involves, also, the right to adduce testimony, and to cross-examine the witnesses adduced on the other side. Persons not having these rights are strangers to the cause. *But to give full effect to the principle by which parties are held bound by a judgment, all persons who are represented by the parties and claim under them, or in privy with them, are equally concluded by the same proceedings.*" "The ground, therefore, upon which persons standing in this relation to the litigating party are bound by the proceedings to which he was a party, is, that they are identified with him in interest; and wherever this identity is found to exist, all

are alike concluded."

"The law is, that he who intermeddles with property in litigation does it at his peril, and is as conclusively bound by the results of the litigation, whatever they may be, as if he had been a party to it from the outset. Inloe v. Harvey, 11 Md., 524; Salisbury v. Morse, 7 Lans., 359; Harrington v. Slade, 22 Barb., 162; 1 Story, Eq., sec. 406."

Tilton v. Cofield, 93 U. S. 163; Robbins v. Chicago, 4 Wall. 657.

"The estoppel extends to every material allegation or statement which, having been made on one side and denied on the other was at issue in the cause and was determined therein."

Aurora vs. West, 7 Wall. (U. S.) 102, quoting with approval New Orleans vs. Bank, 167 U. S. 371.

"Any conclusion which the court or jury must evidently have arrived at in order to reach the judgment rendered will be fully concluded."

Florida Cent. R. R. vs. Schutte, 103 U. S. 118;
Oglesby vs. Attrill, 20 Fed. Rep. 570.

Argument to show that the Appellants were parties in the proceedings to have the Hudson Clothing Company adjudicated bankrupt.

It appears from docket entries (p. 86) that F. E.

Guernsey appeared in opposition to the involuntary petition "for Trs. H. Hudson," and there is also an entry under date of Nov. 5, 1904, as follows: "Nov. 5, F. E. Guernsey (Dover) ent. app. for Henry Hudson," but it appears from the letter to the Clerk, dated Nov. 4, 1904 (p. 73) that Mr. Guernsey's request was, "enter my name for the *estate of Henry Hudson.*" Nov. 8, 1904 (p. 74) F. E. Guernsey sent to the Clerk an answer to the involuntary petition, stating "I file this as attorney in behalf of Henry Hudson Estate." This answer was entered and filed Nov. 9, as appears by docket entry (p. 86). Again on Nov. 14, Mr. Guernsey writes (p. 74), "We shall file further answer," and docket entry shows (p. 86) "Nov. 22 further answer of trustees filed."

Now, the appellants contend that the answers of the appellants "were disregarded" by the District Court. The original petition in bankruptcy was returnable Nov. 5, 1904. Unless an appearance had been made and an answer filed within five days, the partnership would have been adjudicated a bankrupt on the sixth day after Nov. 5, 1904, (Bankruptcy Act. Sec. 18 (b)). No answer except that filed by the appellants was filed until long after the expiration of the five days following the return day, but no adjudication was made upon default, and it is, therefore, evident that the Court recognized the answers of the appellants, and considered that they had some standing in Court. This is also evident from the fact that the Court allowed the appellants to file an amended answer, and conclusive

evidence that the answers of the appellants were considered by the Court is found in the testimony of their attorney, F. E. Guernsey, where he says (p. 31), referring to the answer filed by the appellants, that the Court "finally said that all of the matters would stand for consideration."

It appears from the testimony of F. E. Guernsey (p. 30) that he attended two hearings in Portland in reference to the bankruptcy petition, and that at one of these hearings, the answers of the appellants were before the Court. He says, "At the first meeting I attended for the trustees of Henry Hudson Estate." The hearing before Judge Hale upon which the adjudication was made was held on June 13, 1905, and it is not in dispute that F. E. Guernsey took part in that hearing as an attorney. It also appears, (p. 31), that he made the following charge in his books against the appellants, "To services in Portland in connection with petition in regard to the Hudson Clothing Company to secure assets of the Hudson Estate, and preparing for the same, either $15 or $25." On the same page 35 Mr. Guernsey testifies that he was attorney for the trustees of the estate of Henry Hudson from Aug. 23, 1904, to Dec. 2, 1905. He also says (p. 31) "I understand that when I first appeared on Nov. 5, 1904, as attorney for the trustees of Henry Hudson Estate, I appeared in behalf of pleadings filed by the trustees of that estate, which the Court was not inclined to consider, but finally said that all of the matters would stand for consideration;" and on p.

32 he testifies that he cannot recall that then, (on June 13), or at any later time, did he attempt to have the answers of the appellants taken up and considered by the Court. He says (p. 32), referring to the hearing on June 13, "I appeared for Henry Hudson on his pleadings," but he also says "any charges made by me against the estate of Henry Hudson were charges for my time and trouble appearing at that hearing to watch what the Court would do that would effect the interest of the estate of Henry Hudson." He says (p. 32) that he never made any charge on his books against Henry or James Hudson.

It appears from the testimony of John W. Manson, one of the appellants (p. 38) that he was present in Court as an attorney on Aug. 8, 1905, at the hearing upon the petition for re-hearing on the bankruptcy petition. He claims that he was then acting as attorney for James and Henry Hudson, one or both, but that his charges were all made to Charles F. Cross & Co., petitioning creditors against H. Hudson. He says (p. 36), "I did not consider that Henry Hudson should pay for my appearance there, although he requested me to appear for him." He testified later (p. 37) that certain of the charges which he had from time to time made to Charles F. Cross & Co., "should be paid out of the estate of Henry Hudson."

(*b*) **Since it is not essential, in order to maintain the claim of res adjudicata against**

a party, to show that he was a party to the record in a former suit, it necessarily follows that it is not necessary to show that he signed the pleadings in the former suit.

The appellants contend that "they have never been parties to a controversy establishing the partnership," but in view of the testimony to which we have made reference, it appears that the only possible ground for such contention is their claim that the hearing in the bankruptcy proceedings was upon the petition and the answers filed by Henry and James Hudson. The fact remains undisputed that Henry and James Hudson were only nominal parties to the controversy, and that the only parties in interest were the appellants, who at the time, were in possession of the stock in controversy or the proceeds of that stock.

(*c*) **When a second suit is upon a different cause of action from the first, the judgment in the former action operates as an estoppel in the latter as to every point and question which was raised and actually litigated and determined in the first action.**

Natl. Foundry, etc. Works v. Oconto Water Supply Co., 183 U. S., 216.

Southern Pac. R. Co. v. U. S., 168 U. S., 1.

Campbell v. Rankin, 99 U. S., 261.

Nesbit v. Independent Dis., 144 U. S., 610.

Franklin v. German Sav. Bank, 142 U. S., 93-100.
Cromwell v. Sac. Co., 94 U. S., 351.
Lovejoy v. Murray, 3 Wall., 1.
Robbins v. Chicago, 4 Wall., 657.
Aetna Life Ins. Co. v. Board of Com'rs., 117 Fed. Rep. 82.
Geer v. Board of Comr's., 97 Fed. Rep. 435.
New Dunderberg Min. Co. v. Old. et al., 97 Fed. Rep. 150.
St. Joseph Union Depot Co. v. Chicago, R. I. & P. Ry. Co., 89 Fed. Rep., 648.
O'Hara v. Mobile & O. R. Co., 75 Fed. Rep. 130.
Van Fleet's Former Adjudication, Vol. 1, Sec. 277.
Amer. & Eng. Ency. of Law, Vol. 24, p. 765.

"The general principle announced in numerous cases is that a right, question, or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified. This general rule is demanded by the very object for which civil courts have been established, which is to secure the peace and repose of society by the settlement of matters capable of judicial determination. Its

enforcement is essential to the maintenance of social order; for the aid of judicial tribunals would not be invoked for the vindication of rights of person and property, if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals in respect of all matters properly put in issue and actually determined by them.".

Southern Pacific R. Co. v. United States, 168 U. S., 1.

"In order to correctly decide what was considered by the decision of the circuit court of appeals in the creditors' suit and the final decree entered in such cause, it must be ascertained who were the parties to that cause, what were the issues therein presented for adjudication, and what was decided thereon. It is elementary that if from the decree in a cause there be uncertainty as to what was really decided, resort may be had to the pleadings and to the opinion of the court, in order to throw light upon the subject. Baker v. Cummings, 181 U. S., 117; Last Chance Min. Co. v. Tyler Min. Co. 157 U. S., 684, 688."

National Foundry & Pipe Works v. Oconto City W. Supply Co., 183 U. S., 216.

"When a fact has been determined in the course of a judicial proceeding, and a final judgment has been rendered in accordance therewith, it cannot be again litigated between the same parties without virtually impeaching the correctness of the former decision, which from motives

of public policy the law does not permit to be done.

The estoppel is not confined to the judgment, but extends to all facts involved in it as necessary steps or the groundwork upon which it must have been founded."

Sly vs. Hunt, 159 Mass. 151;
Doglioni vs. Crispin, L. R. 1 H. L. 301, 311, 314;
Trafford vs. Blanc. 36 Ch. D. 600.

The trustees of the estate of Henry Hudson submitted their alleged grievance to a court of competent jurisdiction.

They had their day in court, and were heard.

The identical matter was adjuged against them; and this principle has often been applied by the courts.

Green v. Bogue, 158 U. S. 478.
Goodrich vs. Chicago, 72 U. S.—5 Wall. 566.

Argument to prove that the question of the ownership of the stock of goods was a material issue, which was raised and litigated in the proceedings to have Hudson Clothing Company adjudicated a bankrupt.

In the original bankruptcy petition against the Hudson Clothing Company (p. 87) there is a distinct allegation that the Hudson Clothing Company owned a stock of clothing, and other goods, wares and merchandise, which had been in the store at Guilford, occupied by the bankrupt co-partnership, and it is not in dispute that the stock was

the same as that in controversy in the case at bar. In the first answer of the appellants to the bankruptcy petition (p. 82), and also in the second answer (p. 82), the appellants deny that the Hudson Clothing Company owned the stock, the answers going so for as to deny that the Hudson Clothing Company ever owned any property. The ownership of the stock was one of the material facts, which it was necessary for the petitioners against the Hudson Clothing Company to prove, in order to obtain an adjudication. The pleadings, the testimony and the opinion of the District Judge all show this. In his opinion (p. 62) Hale J., says:

"The original petition in involuntary bankruptcy in this case alleges that Henry Hudson and James Hudson constituted the partnership of the Hudson Clothing Company; *that the partnership owned the stock of goods, and that an act of bankruptcy had been committed in connection with that stock of goods.* In the matter of adjudication, this court had a full hearing in June 1905. Much testimony was before the court on the question of the existence of a partnership, and *as to the ownership of the goods by the alleged partnership.* Petitioners claimed that Henry and James Hudson were partners in fact, and that they owned the stock of goods in question. The matter was fully argued by counsel; the Court ordered the partnership adjudicated bankrupts."

Testimony of James Hudson (p. 19-29) was directed

largely to the question of the ownership of the stock of goods in controversy. That his testimony at the hearing upon the bankruptcy petition was also directed largely to the question of the ownership of the stock of goods is made clear by the testimony of Calvin W. Brown (p. 44), an attorney. who testified that he was present as a witness at the hearing on the involuntary petition in bankruptcy; that James Hudson and other witnesses in the proceeding before the referee were witnesses at the hearing on the involuntary petition in bankruptcy; that he had read the testimony of the witnesses in the hearing before the referee, and that their testimony at both hearings was "substantially the same."

IV

THE FINDING OF THE DISTRICT COURT THAT THE HUDSON CLOTHING COMPANY WAS A PARTNERSHIP COMPOSED OF JAMES AND HENRY HUDSON WAS CORRECT.

The evidence in the case is such as to firmly establish a partnership in fact, and that the learned Judge of the District Court made no error in so finding.

No evidence was presented to show, or attempting to show, the existence of a partnership by estoppel, and no claim has been made by the Appellee that the partnership was of that nature.

All the evidence adduced was brought forward with

the intention to prove and maintain a partnership in fact between Henry and James Hudson, and nothing could be farther from the real facts than an attempt to invoke the principle of estoppel in the proceedings. These men did not hold themselves out as partners, and upon that point Judge Hale in his opinion (p. 64) says: "Upon a careful review of the record, I do not find evidence tending to show that Henry and James held themselves out to the public as a partnership; but rather that the contrary is true."

"Whenever it appears that there is a community of interest in the capital stock, and also a community of interest in the profit and loss, then it is clear that the case is one of actual partnership between the parties themselves, and of course it is so as to third persons. All of the decided cases however agree that *it is seldom or never essential that both of these ingredients should occur in the case* in order to establish that relation. Cases occur undoubtedly where a community of interest in the property, without any regard to the profits, will almost necessarily lead to the conclusion that the relation between the parties was that of partnership; and under some circumstances, that conclusion will follow, although the sale of the property for the joint interest may not be contemplated by the parties."

Berthold vs. Goldsmith, 24 How. (U. S.) 536, 541.

The Circuit Court of Appeals gave acceptance and weight to this finding also, in these terms;— (p. 109).

"We will observe however, that the learned judge of the District Court found that there was a copartnership in fact between the two brothers under the style of the Hudson Clothing Company. He did not rest his conclusion in any way on any hypothesis of a copartnership by an estoppel in the strict sense of the expression. This is important, because we regard the law as settled that, in bankruptcy proceedings involving a copartnership, the copartnership is, ordinarily, to be regarded as a true entity, precisely as the individual partners are."

The elements and proof that constitute a partnership *in fact* were present, and indisputably sustained by the evidence.

James contributed to the partnership in the beginning of his own means $1000 which formed the first opening of a bank account, and Henry contributed a stock of goods, some of which were not paid for at the time but were later paid for out of the partnership funds. To the $1000 were added from time to time receipts from the sales of the goods, including receipts from the sales from the stock Henry put in (the Rand stock so-called) and sales of new goods ordered by James in the name of the Hudson Clothing Company. Upon this bank account checks were drawn by James to pay debts for new goods bought, and also on the debts due for merchandise in the Rand stock that Henry had put in. (James' testimony pp. 23-24.)

The David Bros. account, Brown-Durrell account, and Standard Clothing Co. account, were of that nature.

From this account also James drew for his personal expenses, (p. 25.) He did not draw from it as salary, but personal expenses as a partner would do.

This bank account was kept at first in James' name from the fact that he was awaiting a check-book with checks properly printed like Ex. 15 (p. 86) of the Hudson Clothing Co.; and when such check-book was ready the bank account was changed from the name of James Hudson to that of Hudson Clothing Co., (p. 24).

And all of these acts, and this conduct, was in due line and course of the transaction of the business of the partnership *in fact*. In addition to this goods were ordered by James in the name of the Hudson Clothing Company, came marked that way, were put into the store and on the shelves of the company, and mingled promiscuously with the goods and stock of the company. (p. 20.) The stock was advertised as the stock of the Hudson Clothing Company, (pp. 92-3), signs with that name were displayed (pp 20), the store was designated as the store of the Hudson Clothing Company, and stationery used bore that name (p. 70). It also appears by the testimony (p. 19 and Exh. 89. p. 48) that Henry and James planned to form a corporation under the name of Hudson Clothing Company. Legal papers were prepared, and other steps taken looking to this result.

The corporate name was assumed, but the organization was not completed. And Henry testifies (p. 48) that this plan was never given up, but for some reason put off from time to time.

The Circuit Court of Appeals likewise grouped these transactions and facts as being strong evidence of the creation of a copartnership in fact: (p. 111).

— — —"That the name Hudson Clothing Company was publicly exhibited by a sign on the store where the business was transacted; that the bills received and rendered carried that title; and that, beginning with September 1902, the account with the First National Bank of Guilford, at which the deposits of the business were made, which until that time had been kept in the name of James Hudson, was changed to Hudson Clothing Company, and checks were subsequently drawn as the checks of the Hudson Clothing Company. There was thus a general holding out to the public to that extent. Although for the purpose of maintaining merely an estoppel in the strict sense of the word, this cannot be availed of, as we have shown, it is available on the question of an existence of a copartnership in fact; because, as this all occurred in the small town in which Henry Hudson lived, and as he admitted that he knew the name Hudson Clothing Company had been used, the learned judge of the District Court *had a right to find*

as a fact that he knew, or ought to have known, the extent to which that had gone.

Bearing in mind the fact that all agreements as to which no particular form is demanded, may either be proven as made expressly or proven as made by implication, the fact of this public use of the name, apparently that of a copartnership, must be given its due effect."

Frost vs. Walker 60 Maine 470, a leading case in this State, thus lays down the law in such cases, speaking through Judge Walton:

"An unincorporated joint stock company is a mere partnership and each member is personally liable for all its debts. * * * * The New England Express Company was never incorporated. It was, therefore, a mere partnership, and each member was personally liable for all its debts." Not a partnership by *estoppel* but a partnership *in fact*, with all liabilities arising thereunder.

This principle of law is also recognized and sustained in Chapman v. Barney, Pres. of the U. S. Express Co., 129 U. S. 677, where the court held that a joint stock company was "a mere partnership." Also in Seiffert v. Irving, 15 Ont. (Can.) 173:—"If they failed to be a corporation they must necessarily be a partnership."

The exhibits of the Appellants show that the creditors

of the Hudson Clothing Company, dealing with it, believed it to be a corporation. And did Henry dispel that delusion? Did he, whom the Appellants now claim as having been the real and only owner of the goods from the first, seek to correct this wrong belief of the creditors? So far from that the evidence (as shown by the guaranties pp. 95 & 98 & 104 and by his testimony) proves that he fostered and encouraged it by endorsing the notes of the Hudson Clothing Co., and giving his personal guaranty to the Creditors of the Clothing Company.

If he believed himself to still remain the real and only owner of those goods would he indorse notes and guarantee accounts for which he, himself, was liable as principal,—guarantee his own debts and indorse his own notes!

It appears by petitioner's Exh. 25 (p. 95) and also by Respondents Exh. 10 (p. 98) that in several instances where Henry guaranteed Hudson Clothing Company accounts, he expressly limited his liability under the guaranties to the sum of $500. Is it conceivable that he would attempt to limit his individual liability in this way, if in fact he considered himself the sole owner of the business of the Hudson Clothing Company, and individually liable for the full amount of accounts for merchandise purchased?

The truth is that he believed himself to be a partner, and hence was willing within certain limits to give the additional security of his individual responsibility to the

partnership paper and debts.

And the learned District Judge in reviewing this testimony is constrained to say forcibly that, "The whole testimony induces the belief that they were partners in fact."

And the learned judge of the Circuit Court of Appeals sustained and gave additional emphasis to that finding thus: (p. 113).

"The result is that, whatever may have been the intention when Henry Hudson put the property into the hands of James Hudson to be managed by him, those gentlemen and the circumstances of the business drifted entirely away from it, and the relations between them must be determined by what afterwards ensued. Those relations embraced all the elements necessarily included in the definitions given by the Partnership Act and by Mr. Justice Gray; and it is impossible to characterize the substantial result except as has been done by the learned judge of the District Court."

Neither Henry nor James attempt to otherwise explain their relationship in this affair, and their acts, conduct and surrounding circumstances can only be explained by the existence of a partnership in fact.

Wigmore on Evidence sect. 1249.

The existence of a partnership may be proved by

facts from which a partnership may be inferred, such as the conduct and acts, and surrounding circumstances of the parties.

95 Fed. Rep. 544;
55 id 257;
51 id 693;
30 Cyc. 353.

Dwinel vs. Stone; 30 Maine 384;—

* * * * "One essential element of a partnership is a community of interest in the subject matter of it. *Tenet totum in communi et nihil separatim per se* has been the keystone of the arch since the days of Bracton.

* * * * Whether one (partnership proper) existed or not, is an inference of law from the facts."

Porter v. Graves, 104 U. S. 174;—

* * * * "Private arrangements between the partners as to the relative influence and responsibility of each in deciding questions arising in the course of their business do not disprove the existence of the partnership."

The course of conduct of the parties alleged to be partners may be proved as tending to show the nature of their relation.

Earle vs. Publishing Co., 95 Fed. Rep. 544;

Blair vs. Harrison, 57 Fed. Rep. 257, s. c. 18 U. S. App. 27.

The intent which is controlling is the intent to contract for those things which the law declares constitute a partnership. If the parties intend to enter into such a contract and actually do so, they will be partners although they may have stipulated that they are not to be partners. It is the legal and not the expressed intent that controls.

22 Am. & Eng. Ency. (2nd ed.) 26;
Woolworth vs. McPherson, 55 Fed. Rep. 558;
Bigelow vs. Elliott, 1 Cliff. (U. S.) 28.

The undisputed testimony of C. W. Brown (pp. 38-39) shows that Henry told him when he was pressing for payment of a debt due from the Hudson Clothing Co. that the assets of the Hudson Clothing Co. were sufficient to pay the debts of the Hudson Clothing Co., and ought to go that way. Further, the evidence shows (Henry's testimony p. 53) that he as an attorney prepared the schedules in the bankruptcy of James, and entered among James' creditors all the creditors of the Hudson Clothing Co., under the heading "Creditors of James Hudson under name of Hudson Clothing Company," and that Henry in his own schedule of liabilities listed the same names as his creditors.

And still the Appellants set forth the claim that in face of all these proven facts the goods sold by these cred-

itors were the property solely and completely of Henry Hudson.

Appellants set forth the position that there was an absence of profit sharing.

In Frost vs. Walker, supra, the Court say

"And by thus contributing to the actual working capital of the company, we think they became entitled to share in the profits of the business in case profits should be realized".

The learned judge of the Circuit Court of Appeals answered well the proposition of the Appellants that profit-sharing is an essential element in every true partnership, and that its absence is conclusive that such partnership does not exist, by the language of the court on p. 113:—

"The difficulty with definitions, like those brought forward by the trustees of the Henry Hudson estate, is that they put the agreement to share profits to the forefront. The right to share profits is of course an element in a true copartnership; but when it is said that a copartnership involves an agreement to share profits, it goes beyond the legislative definition, and that of Mr. Justice Gray, which we have quoted, (p. 112—3) and unnecessarily beyond them. The right to share profits,

of course, exists; but the right may arise without anything in the nature of an express agreement, indeed without anything in the nature of an implied one. The right to share profits is an indication of the existence of a copartnership, but it may result from an agreement to that effect, or it may flow out of the relationship which exists between the parties. It is true that the present case is embarrassed by the fact that, in the absence of any agreement as to the profits, in connection with the further fact that Henry Hudson contributed only assets while James Hudson contributed only personal services, it may be difficult to determine how profits would have been shared, and therefore it is plausible to suggest that there could have been no profits, and consequently no partnership. Nevertheless, both these details are met by *Paul V. Cullom*, 132, U. S. 539, 550, where it was observed, that, in the absence of any evidence showing a different intention, partners would be held to share equally both profits and losses."

And this language is fully sustained by the decided law as shown in Appellee's citations.

"While in the absence of written stipulations or other evidence showing a different intention, partners will be held to share equally both profits and losses."

Paul vs. Cullom, 133 U. S. 539, 550.

Blair v. Shœffer, 33 Fed. Rep. 218.

"No express stipulation for dividing the profit and

loss is necessary as that is an incident to the prosecution of the joint business."

Bancroft vs. Hornbly, 36 C. C. A. 601.

McMurtie vs. Guiler, 183 Mass. 451, 454:—

"Where the contract is silent, equity will adjust the rights of the partners to profits on the basis of what their intention was as shown from all the facts of the case."

And we say that with all the acts and circumstances surrounding these men, and in connection with this business, the conclusion is irresistible that there must have been either a direct or implied understanding as to the sharing of profits, if any resulted.

Henry Hudson kept an account with the Hudson Clothing Co. (pp. 48 & 52), the Hudson Clothing Co. kept an account with Henry Hudson. (p. 28.) Neither of these accounts would have been kept had Henry been the real and sole owner of the goods.

The claim of the Appellants that *loans* were made by James to Henry Hudson of the amounts paid to David Bros., Brown-Durrell Company, and Standard Clothing Company, is directly disproved by the circumstances of the payments themselves. The check for the David Bros. account was payable, as the check stub shows (p. 81 Exh. 13) to C. W. Brown, their attorney "for David Brothers." The other checks were made payable to the creditors them-

selves (p. 81 Exh. 13).

No charge was ever made by James Hudson against Henry Hudson on account of these payments, although an account was kept with Henry, and if these payments had been loans to Henry, we can conceive of no reason why they should not have been charged against him.

Appellants insistently argue that all of the $1000.00, which James put into the business was used by him in his personal matters. This is directly disproved by the testimony and by the probabilities of the truth. The $1000.00 and the receipts from sales were so mixed and intermingled that no separation was made or could have been made. (James' tes. p. 23). The deposit book (pp. 82-83) shows that such was the case, and that deposits were made in the general course of business from May 2, 1902, to Sept. 11, 1902, when the account in the name of James Hudson was closed and the account in the name of Hudson Clothing Company was opened. The evidence shows clearly that the mixed fund arising from the $1000 and the receipts from sales of merchandise was used indiscriminately to pay for new goods and for goods put in by Henry Hudson. The funds received from sales together with the $1000 must have been used in part to pay for $4800 of old debts due on the Rand stock (Henry's test. p. 50), in order to make any reasonable explanation of the disappearance of the value of all of the original stock, and the existence at

the end of a two years' business, of liabilities contracted in the name of the Hudson Clothing Company aggregating $8948.14 (p. 26), with a stock of goods remaining of less than $6000 at cost prices (p. 26).

The evidence in this case shows that the business of the Hudson Clothing Company had its beginning in a stock of goods contributed by Henry (not wholly paid for) and $1000 cash contributed by James. From this cash and the proceeds of this stock and the proceeds of new stock purchased a bank account was maintained, goods were bought, and payments made, certain outstanding debts on the Rand stock were paid, and a general business carried on for over two years, all under the name of Hudson Clothing Company. To the Hudson Clothing Company dealers came and sold, credit was extended, and demands for payment were made. The creditors knew no one else in the dealings. Their belief and confidence were not disarmed by Henry or James. The same tenor of conduct and business continued unquestioned and undenied until voluntary bankruptcy petitions were filed by Henry and James almost simultaneously. Each man then admitted in his bankruptcy schedules that he owed the creditors, who later were found to be creditors of the Hudson Clothing Company. These admissions were wholly inconsistent with the claim now made that Henry was the sole owner of the goods purchased of these creditors. The creditors

who had parted with their goods in all sincerity, dealing with the Hudson Clothing Company, are now informed that they were dealing with a myth, extending credit to some phantom exisiting in name only.

If the $3500 proceeds from the stock of goods that Henry Hudson put into his schedule of assets as "stock in trade in business of Hudson Clothing Company, at Guilford, Maine, of the value of $3500" (page 43—admission), goes accordingly to appellants' strenuous contention, then it goes to an array of creditors of Henry Hudson, who never had the slightest thought that the property formed a part of his estate. If, on the other hand, it goes in accordance with the appellee's contention, it goes to pay back a portion of the indebtedness to those men who sold the goods in all sincerity, and extended a generous support to the credit of what they believed to be a corporation, doing business under the name of Hudson Clothing Company, but which was in fact a partnership doing business under that name. At best these creditors can get but a small percentage on their accounts for goods sold by them, for James testifies (p. 26) that $8948.14 was owing by the Hudson Clothing Company at the date of the commencement of bankruptcy proceedings, and the stock was sold for $3500.

The appellants surely cannot fairly claim to base their position on law, equity, justice, or the recognized rules of

merchantile business.

V

THE FINDING OF THE DISTRICT COURT, WHICH WAS SUSTAINED BY THE CIRCUIT COURT OF APPEALS, THAT THE GOODS IN QUESTION BELONGED TO THE HUDSON CLOTHING COMPANY, WAS CORRECT.

This point has already been argued under point IV.

MANSON *v.* WILLIAMS, TRUSTEE IN BANKRUPTCY OF HUDSON CLOTHING COMPANY.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

No. 169. Argued April 20, 21, 1909.—Decided May 3, 1909.

Where both the District Court and Circuit Court of Appeals have found as a fact that a partnership existed and owned the stock, while this court may, it will not, as a general rule, disturb the findings.

While an adjudication putting two or more persons into bankruptcy as partners is, for the purpose of administering the property, good as against all the world, it does not establish the existence of the partnership except as against parties entitled to be heard, and that question is not *res judicata* as against one who had denied being a partner and had not been heard.

It will be presumed that one who furnished capital for business expects gain therefrom, and if he is not a creditor receiving interest, his gain must come from profits as a partner.

In this case, there being evidence to support the finding of the two lower courts that a partnership existed by an implied understanding between two brothers pending the formation of a corporation, this court affirms the judgment notwithstanding that it might not necessarily have reached the same conclusion had the case been here tried in the first instance.

153 Fed. Rep. 525, affirmed.

THE facts are stated in the opinion.

Mr. John W. Manson, with whom *Mr. Harry R. Coolidge* was on the brief, for appellants.

Mr. John S. Williams, with whom *Mr. Albert S. Woodman* was on the brief, for appellee.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a petition by the appellee, the trustee in bankruptcy of the Hudson Clothing Company, that the appellants, the trustees in bankruptcy of Henry Hudson, pay over to the appellee the proceeds of a stock of goods alleged to have belonged to the company. The referee in bankruptcy made an order as prayed, which was sustained on the principal matter by the District Court, 148 Fed. Rep. 305; and the decree of that court was affirmed by the Circuit Court of Appeals. 153 Fed. Rep. 525; *S. C.*, 82 C. C. A. 475. A further appeal has been taken to this court. *Hewit* v. *Berlin Machine Works*, 194 U. S. 296.

The facts to be gathered from the opinion of the Circuit Court of Appeals and admitted are these. Henry Hudson became the owner of a stock of goods and desired to sell them. He also wished to help his brother James, and therefore put him in to do the selling. In the beginning he contemplated forming a corporation, turning the goods over to it and taking most of the stock as security, but letting James take the profits. This plan, however, was allowed to slumber, and the business was carried on by James for over two years. From an early moment James adopted the name of Hudson Clothing Company, using it as a sign, and in advertisements and on billheads. This was known to Henry, and when he advanced money to the business, as he did, he charged it on his books to the company. The bank account was kept with James, the bank book having the name Hudson Clothing Company above. Some of the exhibits in evidence have, besides the name of the company, the words "Henry Hudson, Pres.," and "James Hudson, Treas. and Mgr." There was no act of transfer on the part of Henry, but when he took goods from the shop he paid for them in the same way as if he had bought

them elsewhere. Both the District Court and the Circuit Court of Appeals have found as a fact that the brothers were partners, and that the goods belonged to the firm. In such cases this court as a rule will not disturb the findings, but it has done so in some instances, *Darlington* v. *Turner*, 202 U. S. 195, 220, and in the case at bar the appellants contend that there really was no evidence to justify the result reached.

The appellee says that the question is concluded by the adjudication putting the company into bankruptcy, that being an adjudication against the two brothers. On the other hand, the record shows that the trustees of Henry, although they had filed a denial and answer, were not heard on that question. The principle of law is plain. The adjudication put the two brothers into bankruptcy for the purpose of administering whatever property there might be, as against all the world. But it did not establish the facts upon which it was founded, no matter how necessary the connection, except as against parties entitled to be heard. *Tilt* v. *Kelsey*, 207 U. S. 43, 52. If the trustees of Henry were not entitled to be heard, it is because they had no concern with whether the alleged firm was wound up in bankruptcy or not, but only with the facts upon which creditors sought to wind it up, that is to say, the existence of the partnership and the title to the partnership assets, and these facts would remain open to dispute. As the trustees of Henry were not heard, it would come with bad grace from one who might have urged the foregoing considerations, to argue here that they are bound to admit anything except that Henry and his brother are in bankruptcy as partners. Furthermore, we gather from the opinion of the District Judge that all parties requested him to examine the evidence, and that the defense of *res judicata* really was waived. But as the partnership might have been a partnership in profits only, leaving the title to the capital in Henry alone, the adjudication, even if it established that there had been a partnership, could not conclude anything as to the title to the assets, the matter with which we now are concerned.

We come back then to the question whether the findings of the two courts below are so clearly unwarranted as to call upon us to reconsider the evidence and to reverse the decree. In the first place we may lay on one side the fact that the parties began with the intent to form a corporation. They did not understand that they were acting as a corporation, nor did their dealings so far purport to be dealings of a corporation as to preclude the finding that was made. Now suppose that we take nothing more than the facts that one man furnishes capital and another his personal service in disposing of it, and that the latter is admitted to be interested in the profits if any, and at the same time not to be a debtor of the former. We have a right to infer that if a man furnishes capital he expects some gain from it. But as, in the case supposed, he is not a creditor and will not get interest, his gain must come from profits of the business. Some kind of joint interest therefore may be inferred, and the Circuit Court of Appeals would have had some warrant from these facts alone for concluding that Henry would have had a right to share the profits equally with James.

We are aware that there is evidence looking the other way, but that is not the question. On the other hand, the inference is strengthened by the facts that we have mentioned. Henry Hudson knew the name under which the business was done, and is likely to have known that his name sometimes was exhibited as president. It is true that the terms suggest a corporation, but under our usages not necessarily, and he at least knew that there was no corporation. He paid for the goods he bought, as if other interests were concerned. We mention these facts as admissions by conduct. Apart from the findings of the two courts it is unlikely that if great profits had been realized he would not have demanded a share. As to James, not only is it admitted that he was interested in profits, but there is some evidence that he contributed to the assets, as we shall explain.

If we take it as established that both brothers were interested

in the business, it is not a difficult step to infer that the capital of the business was firm capital. Whether capital shall be attributed to the firm or to a partner is a matter that often escapes the attention of the members. For if there is a joint liability for debts it does not matter very much to the party furnishing the capital whether he owns it or whether he charges it to the firm. In a case where two partners contributed capital and two partners contributed time it was held that the capital belonged to the firm and that those who contributed time were bound to make good their proportion of the loss. *Whitcomb* v. *Converse*, 119 Massachusetts, 38. Moreover, when James went into the business a thousand dollars belonging to him were deposited in his name undistinguished from the deposits on the business account. The money or a part of it was used to pay liabilities of Henry in connection with the stock in trade. It is true that ultimately more than that sum was used in paying James's outstanding debts, but the mingling of funds tends to show a common interest. The facts that we have mentioned seem to us to constitute some evidence that the relation between the brothers was a partnership by implied understanding until a corporation should be formed. It does not matter that it was not formally recognized or that they may not have used the name to themselves if that is the fair result of what they did understand and intend. We do not say that we necessarily should have come to this conclusion if the case had been tried before us in the first instance, but upon a pure question of fact the error, if there was one, is not so plain as to call upon us to depart from our usual rule.

Decree affirmed.